DEPARTMENT OF JUSTICE AUTHORIZATION REQUEST FOR FISCAL YEAR 1983

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

SECOND SESSION

ON

THE AUTHORIZATION REQUEST OF THE U.S. DEPARTMENT OF JUSTICE FOR FISCAL YEAR 1983

MARCH 23, 1982

Serial No. J-97-106

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE

99-781 O WASHINGTON : 1982

S521-94

COMMITTEE ON THE JUDICIARY

STROM THURMOND, South Carolina, *Chairman*

CHARLES McC. MATHIAS, JR., Maryland
PAUL LAXALT, Nevada
ORRIN G. HATCH, Utah
ROBERT DOLE, Kansas
ALAN K. SIMPSON, Wyoming
JOHN P. EAST, North Carolina
CHARLES E. GRASSLEY, Iowa
JEREMIAH DENTON, Alabama
ARLEN SPECTER, Pennsylvania

JOSEPH R. BIDEN, JR., Delaware
EDWARD M. KENNEDY, Massachusetts
ROBERT C. BYRD, West Virginia
HOWARD M. METZENBAUM, Ohio
DENNIS DECONCINI, Arizona
PATRICK J. LEAHY, Vermont
MAX BAUCUS, Montana
HOWELL HEFLIN, Alabama

VINTON DEVANE LIDE, *Chief Counsel*
QUENTIN CROMMELIN, JR., *Staff Director*

CONTENTS

STATEMENTS OF COMMITTEE MEMBERS

	Page
Specter, Arlen	1
Biden, Joseph R., Jr	2

CHRONOLOGICAL LIST OF WITNESSES

Smith, Hon. William French, Attorney General of the United States	3
Rooney, Kevin D., Assistant Attorney General for Administration, Department of Justice	39
Baxter, William F., Assistant Attorney General, Antitrust Division, Department of Justice	41

MISCELLANEOUS SUBMISSIONS

Responses to followup questions submitted by committee members:	
Strom Thurmond	25
Charles McC. Mathias, Jr	31
Joseph R., Biden, Jr	32
Arlen Spector	58

DEPARTMENT OF JUSTICE AUTHORIZATION REQUEST FOR FISCAL YEAR 1983

TUESDAY, MARCH 23, 1982

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 9:35 a.m., in room 2228, Dirksen Senate Office Building, Senator Strom Thurmond (chairman of the committee) presiding.

Also present: Senators Specter, Metzenbaum, and Baucus.

Staff present: Eric Hultman, general counsel; Scott Green, minority counsel; and Kevin Mills, general counsel of the Subcommittee on Juvenile Justice.

OPENING STATEMENT OF SENATOR ARLEN SPECTER

Senator SPECTER. Good morning, ladies and gentlemen. Senator Thurmond, the chairman of the committee, has other commitments at this moment but will be along shortly. He has asked me to begin the hearing.

Good morning, Mr. Attorney General. In light of the other commitments which we know you have, Chairman Thurmond wanted to convene the hearing on a timely basis. I would like to put into the record the statement which Senator Thurmond has prepared. It is as follows:

This morning the committee will hear from the Attorney General of the United States, the Honorable William French Smith, on the request of the administration for budget authority for the Department of Justice for fiscal year 1983.

The committee will be moving ahead in the next few weeks to respond to the budget request made by the President and to report appropriate legislation to the Senate prior to May 15 of this year. To accomplish this goal, the views of the Attorney General and other officials of the Justice Department are most helpful. We want to know the priorities and the needs of the Department. We want to accommodate those needs, if we can, recognizing the necessity to keep Federal spending at a minimum while still carrying out Federal responsibilities.

For fiscal year 1983, the Department of Justice has requested an increase of $170,392,000 over last year, with a decrease of 648 positions. This increase is 7.7 percent over the 1982 request, but composed mostly of $58.7 million for the Cuban/Haitian refugee entrant program.

The request also includes a transfer of positions at a cost of $22.2 million from the U.S. Department of Energy pursuant to reorganization of that agency and from the Department of Education.

Finally, the request by the President reflects an effort to reduce Federal grant programs to State and local governments while making an effort to maximize Federal resources.

[At the request of the chairman, Senator Biden's prepared statement follows:]

SENATOR JOSEPH R. BIDEN, JR., STATEMENT ON DEPARTMENT OF JUSTICE OVERSIGHT

I welcome this opportunity to have Attorney General Smith here today to discuss some very important aspects of the 1983 Department of Justice Authorization. The budget proposal for fiscal year 1983 is $2.66 billion which represents a funding increase of 7.7 percent from current levels, but a decrease of 283 positions.

It is in the area of these position reductions that I would like to question the Attorney General closely to be sure in these budget tightening days we are not being short sighted and penny-wise pound foolish.

In my questioning of the Attorney General in last year's oversight hearing, I questioned the wisdom of cutting positions and the budget of cost effective programs which are generally considered revenue producing like the Tax Division, Civil Division, Criminal Divisions and Collections Division of the U.S. Attorney's Offices. Under last year's request, the number of positions for General Legal Activities, which is responsible for major tax cases and prosecution of criminal and RICO statutes for major narcotic traffickers, was cut by 97 positions. I question the wisdom of these cuts last year and note that this year the Attorney General is emphasizing the importance of these programs and their cost effective record, but proposes no additional positions. The 1983 request for General Tax and Criminal Matters sections are in fact 124 postions below the level of 1981, a 9 percent reduction. If in fact, as the Attorney General has indicated in his statement, funding civil litigation activities is one of the most cost effective federal budget decisions, then why were positions cut in this area last year?

In the area of violent crime and drug abuse it is essential that agencies like the FBI, U.S. Attorney's, DEA and assistance to state and local enforcement be adequately funded and in some cases enhanced, if we are ever to go beyond rhetoric and really address this nation's crime problem. I am concerned that this Administration is not willing to go beyond the rhetoric and clearly make the commitment necessary in the law enforcement area.

The Attorney General indicated in his opening remarks that this budget request reflects the President's strong commitment to an effective law enforcement program. Need I remind the Attorney General of the budget cuts to law enforcement the President proposed 6 months ago. The Presedent's proposed cuts would have eliminated 434 positions in DEA, 340 agent positions in FBI, froze undercover investigations, eliminated all state and local drug task forces, froze staff in the U.S. Attorney's Office and on and on. In fact, the U.S. Attorney's collection of fines program, noted in the Attorney General's statement as cost effective, came to a standstill after those cuts were proposed, because of limited staff resources. Had Congress not restored the funding necessary for these law enforcement agencies, it would have had a drastic impact on our federal reponse to crime and severely damaged the morale of many hard working law enforcement people.

Another issue I raised last year was that the Department, in an effort to spread budget cuts across the board, may in fact have lost sight of the big picture. By that I mean there seemed to be no system-wide plan that accounted for the impact that adjusting one area, say law enforcement, may have on others, say prosecution and corrections. A year later we find that U.S. Attorney's are swamped with cases and our federal prisons are 18 percent overcrowded. In both of these areas the Administration sought major cuts in positions last year, and are now forced to respond to problems like case backlogs and prison overcrowding.

The position of this Administration, that violent crime is the primary responsibility of the states and local jurisdictions is accurate, but the federal government should not abandon completely an assistance role. To announce that violent crime and street crime is a priority but then eliminate assistance to state and local enforcement agencies seems a somewhat hypocritical position. Since 1981 we have seen cuts to DEA that include: domestic enforcement, foreign investigations, compliance regulation, state and local training, laboratory service, state and local task

forces and research and development. The FBI has seen similar cuts in state and local training and forensic services and there are now 313 fewer positions in these areas than what was considered necessary to maintain the 1981 level.

I am very concerned that we are losing ground in the crime fight. Today we have 8 percent fewer FBI agents than we did in 1975. DEA now has 159 fewer positions, the U.S. Attorney's have 101 fewer positions and state and local assistance funds for law enforcement have been cut by 75 percent from levels necessary to keep pace with fiscal year 1981. Since 1975 violent crime has gone up 33 percent nationally and 1981 crime figures again show a climb in violent crime.

The Attorney General indicates that this budget request will permit the Justice Department to maintain federal law enforcement operations at current levels of effort. The American people are not satisfied with the current level and neither am I. We must recognize that to make a dent in crime it will cost money. Just like we are spending money on our military readiness, we need to make a much smaller increase in our domestic defense. I am convinced that crime poses as great a threat to our national security as any foreign threat. It is time to stop trying to maintain current levels when we cannot hold crime at current levels. If a greater commitment to specific law enforcement agencies is necessary, then let's face the fact and make the commitment.

Senator SPECTER. Welcome, Mr. Attorney General. We look forward to your testimony.

STATEMENT OF HON. WILLIAM FRENCH SMITH, ATTORNEY GENERAL OF THE UNITED STATES

Attorney General SMITH. Thank you, Mr. Chairman. I am pleased to be here today to discuss the 1983 budget request for the Department of Justice. My total 1983 request is for $2.67 billion and 54,104 positions. This level of resources would allow me to maintain the Department's Federal law enforcement operations at the current level of effort. In view of the necessary, yet significant Federal budget reductions proposed for domestic programs, the Justice request reflects the President's strong commitment to an effective law enforcement program.

Our request includes uncontrollable cost increases of $196.1 million, program increases of $67.8 million, proposed transfers from other departments of $22.2 million, and program reductions of $94.2 million. The major part of our program increase is for $58.7 million to fund the transfer of responsibility to the Attorney General for Cuban/Haitian entrants under the Refugee Education Assistance Act of 1980. Nearly all of our program reductions are related to the elimination of four programs which we had requested the Congress to eliminate last year. These consist of State and local grant programs and the U.S. trustees activity.

Our request represents a continuation of this administration's commitments and priorities which I enunciated before this committee a year ago. At that time I spoke of the need for all Federal agencies to share in overall spending and personnel reductions. I emphasized our commitment to priority crime control areas and the need to reduce Federal subsidies to State and local agencies.

We have contributed our share to necessary overall reductions in Federal spending and in the size of the Federal work force. While accomplishing this, we have been able to fully maintain essential operations and have increased Federal law enforcement efforts in high priority areas. We are also returning control of State and local criminal justice programs to those officials who are closest to the needs of local crime problems.

As I have indicated on several occasions before this and other committees, violent crime is one of the most urgent problems facing the Nation. I am convinced that narcotics trafficking is a major contributing cause of violent crime. Economic conditions continue to require us to consider solutions which do not rely on merely spreading Federal funds to solve the crime problem. In the long run we are likely to be more effective by seeking improvements in how we combat crime than simply by increasing Federal expenditures of money and manpower. With this in mind, we have begun to restructure the Drug Enforcement Administration and, for the first time in the history of the FBI, its agents have also been given a major drug enforcement role. The Director of the FBI has been designated to assist me in overseeing these joint enforcement efforts. Through Department initiatives, the Navy and Air Force are now furnishing information to civilian law enforcement agencies on sightings of suspected drug traffickers heading for the United States and, within the constraints imposed by law, they are providing intelligence on possible narcotics operations.

To minimize duplication of effort and waste of resources among Federal, State and local law enforcement agencies, I have directed each of our U.S. attorneys to establish a local law enforcement coordinating committee that will closely cooperate with State and local enforcement officials and will draft detailed plans for a more effective use of Federal resources against the worst local crime problems.

Last year I announced the appointment of my Task Force on Violent Crime. Over the past several months, you have become well aware of their recommendations. Some of those recommendations, such as reforms in bail laws and other parts of the criminal code, will require congressional action, and legislative proposals are under consideration. Another recommendation addresses the serious shortage of prison space at the State and local level. In response to this problem, we have developed a program to facilitate the turnover of surplus Federal property to States for use as prisons and jails and, again this year, I am seeking authority to assist in improvements to local jail facilities through a cooperative agreement program.

In other areas, the task force recommendations and our internal management reviews have assisted us in directing the resources of the Department and other Federal, State and local law enforcement agencies toward a more effective fight against crime. Although the problems this society faces with respect to crime and its effects are enormous, the resources already available to the Federal Government are significant, and the focus of our effort should be to achieve a level of efficiency and effectiveness that has often been lacking.

LAW ENFORCEMENT

The additional resources made available to the Federal Bureau of Investigation in 1982 will allow us to maintain a strong commitment to our enforcement priorities in 1983 at the current level of operations. Although our 1983 requested level shows a decrease in authorized positions, these positions have never been fully funded

or filled. In fact, my request for the FBI is higher than the current onboard strength and will allow for an actual increase in employment.

As I stressed to you, Mr. Chairman, in a letter early last month, we also intend to continue our efforts to provide applicant fingerprint processing services on a reimbursable basis. We do not intend to charge State and local law enforcement agencies for these services, but need your support in our efforts to place the cost of non-law enforcement requests upon the direct beneficiaries of such services, such as private institutions and State licensing boards.

With concurrent jurisdiction over the investigation of Federal drug offenses assigned to the FBI, I am fully confident that an infusion of FBI resources and expertise, to supplement those of DEA, will aid our national drug enforcement effort. For the Drug Enforcement Administration itself, we are requesting a relatively minor program decrease from current services to be allocated proportionally among DEA's programs. These decreases will be achieved through improved operational efficiency and reductions in redundant administrative activities. There will, however, be no reduction in authorized positions for DEA.

I am also creating a high-level Justice Department committee to oversee the development of drug enforcement policy and to insure that all the Department's resources, including its prosecutorial and correctional efforts, are effectively engaged in the effort against drug trafficking.

DEA has made significant progress in controlling the availability of Southwest Asian heroin. Much of the Southwest Asian heroin destined for the United States in 1980 and 1981 never reached this country. While supplies of opium in Southwest Asia continue to be abundant, enforcement pressure will be maintained on Southwest Asian heroin availability by the appropriate domestic and foreign field offices. Furthermore, asset seizures of major narcotics traffickers have increased substantially. In the past 2 years alone, DEA seized approximately $255 million of drug-related assets. Seizures this year are expected to exceed the total dollar amount of the DEA budget. Continued efforts in the asset seizures area will, no doubt, have a considerable effect on major drug trafficking.

For the U.S. Marshals Service, the budget request reflects the joint efforts of the Department and the courts to develop sound, coordinated responses to our mutual problems. Since my initial meetings with the Chief Justice last spring, we have joined in efforts to resolve the management and resource problems affecting both the service of private process and the provision of court security. This year's budget is based on our continued desire to establish fees to directly fund actual costs for the service of private process. Statutory authority to fund our activities in this manner would result in increased participation by private businesses in providing process service and eventually reduce the burden on taxpayers to subsidize this activity. This is one example of the administration's efforts to encourage private alternatives to Federal Government action through the imposition of user fees. Since valuable Federal law enforcement dollars are now required to subsidize this activity, I have emphasized my interest in your support, Mr. Chairman, in my recent correspondence to you on user fees. With the cooperation

and assistance of the Administrative Office of the U.S. Courts, we have completed an initial plan which addresses the assignment of Deputy U.S. Marshals in courtrooms for security purposes on the basis of anticipated risk levels. This plan provides standard risk indicators which will be used in each judicial district to determine the requirement for a deputy in the courtroom. The determination will be made jointly by the U.S. Marshal, the U.S. Attorney, and the local Federal judiciary. The Chief Justice and I have had further discussions on this matter, and we have reached an agreement on a proposed solution. On March 11, 1982, we issued a joint statement to the Judicial Conference in which we outlined this solution. I would be happy to provide a copy of the joint statement for the record.

The area of immigration is one that has received a lot of attention over the past year. I served as chairman of the Task Force on Immigration and Refugee Policy that reviewed the earlier Select Commission's report. Based on our recommendations, the President requested an amendment to our 1982 budget to provide the Immigration and Naturalization Service with increased resources for its enforcement programs. A large part of this request has been provided in the current continuing resolution; I continue to urge the Congress to include the remaining part of this package, specifically the funding for a permanent detention facility, in your next action on our 1982 funding levels.

We have also submitted an immigration legislative program. This program included establishing employer sanctions with penalties for employers who knowingly hire undocumented aliens; establishing a temporary worker program to allow aliens to work in certain types of employment in geographic areas where there is a lack of available citizen labor; permitting undocumented aliens residing in the United States to receive permanent status after 10 years; providing visa waivers for tourists and business travelers who wish to visit the United States for short periods of time; and providing the President with a wide range of authority in the event of an immigration emergency. These and other legislative initiatives have been transmitted to the Senate as part of the Omnibus Immigration Control Act.

The INS has not had a permanent Commissioner in several years. There is no question this has detracted from its stability, as well as its ability to formulate and implement cohesive immigration initiatives on behalf of the Attorney General. Mr. Alan C. Nelson has now taken the oath of office as the first INS Commissioner in 2½ years. We are hopeful that we can now get on with the business of implementing a strong, responsive program at INS.

In addition to continuing the current operations of INS, my 1983 request includes a new program activity which is being transferred from the Department of Health and Human Services. This new activity provides for the processing, care, maintenance, security, transportation, and initial reception and placement in the United States of Cuban and Haitian entrants. By recent Executive order, this activity was transferred from the Cuban/Haitian Task Force within the Department of Health and Human Services to the Department of Justice.

LITIGATION

Our litigating organizations are the vital link in carrying out this administration's law enforcement responsibilities and in defending Federal programs in court. I am quite sensitive to the primacy and central role of the Department of Justice in Federal litigation. As I have previously testified, I am firmly committed to the principle that the Attorney General is responsible for the coordination and management of the Federal Government's litigation.

My request for both the General Legal Activities appropriation and for the U.S. attorneys would continue the anticipated 1982 levels, with a modest funding increase for payments to private counsel. I am confident that these levels will permit us to keep pace with our increasing litigative and prosecutorial activities. While funding for the legal divisions and the U.S. attorneys will support at least the same level of effort as in this year, we will see some shifts in emphasis.

The U.S. attorneys and the Criminal Division will have a lead role in our program against violent crime, particularly through the development of Federal-State-local law enforcement coordinating committees to handle concurrent jurisdiction matters; this should result in a more effective use of our Federal prosecutorial resources. In this regard, I am pleased to note that the vast majority of U.S. attorneys appointed by this administration have had prior law enforcement experience.

A major priority in the criminal litigation programs of the Criminal and Tax Divisions will be the prosecution of major narcotics traffickers, with emphasis on financial investigations and the forfeiture of assets and profits. Organized crime and economic crime prosecutions, of course, continue to be high priorities. Fraud cases are being given increased emphasis in both the Criminal and Civil Divisions, and we are actively improving our communication and coordination with the Inspectors General of the various departments and agencies.

In prior years, all too little emphasis has been directed in congressional testimony to the importance of our civil litigation program. Our current defense of Federal programs represents nearly $100 billion of exposure. I cannot overstate the pivotal role this activity can and indeed does have in protecting the financial status of the Federal Government. I consider the funding of our civil litigation activities one of the most cost-effective Federal budget decisions.

A major initiative of this administration and a priority of mine in the Department of Justice is the improved management of collections, collecting debts owed to the United States as a result of defaulted loans or court judgments. While this activity pertains to all of our litigating organizations, I have assigned the Assistant Attorney General for the Civil Division a lead role for all Department of Justice collections.

Another cost-effective measure which we intend to maintain with our current resources is further application of automation and word processing systems to litigation management and support. The U.S. attorneys will continue installation of their automated case-management system in several offices. The legal divisions, if

our full 1983 request is approved, will be able to procure equipment for which they had to defer purchase in 1982 because of the outcome of final congressional action on the continuing resolution. I have also established within current resources a separate litigation systems staff in the Justice Management Division to provide direct support to our litigative activities.

For the Antitrust Division, we are requesting a 5-percent position decrease. While this request reflects the administration's objective to reduce Federal employment, it also is an expression of our confidence that we can continue an effective antitrust enforcement program at the requested level. In support of the President's economic program, the Antitrust Division will undertake the vital task of reforming antitrust policy to improve the productivity of the economy and protect the interests of consumers. We will seek to enhance consumer welfare by challenging private parties and Government regulations that impair economic efficiency.

The fees and expenses of witnesses appropriation, which is used by all six legal divisions and the U.S. attorneys, requires a relatively large program increase of nearly $6 million. The increasing use of expert witnesses in complex litigation, rising costs associated with protecting witnesses in sensitive cases, and higher travel, lodging, and subsistence costs in general, compel us to include this essential activity as one of our program increases for 1983.

We are again calling for termination of the U.S. trustees program. The Department requested that this program be phased out in 1982, but congressional actions to date have restored it at a level of $5 million. In my meeting with the Chief Justice last spring, I discussed with him the effects of terminating the program. We have agreed that responsibility for the pending caseload would be returned to the judiciary under the overall supervision of the Administrative Office of the U.S. Courts, at a considerable savings in operating costs. The Department is committed to working closely with the bankruptcy courts and the Administrative Office of the U.S. Courts to insure that there will be a smooth, efficient transfer of functions.

CORRECTIONS

The Federal prison population has increased by 17 percent over last year. The increase is attributed to several factors, including requirements to house Cuban and Haitian detainees, the decline in the release rate and increased parole revocations. We anticipate that the Federal prisoner population will continue to grow in the future because of our aggressive investigative and prosecutorial policies. To accommodate the increase, the plan to close the Atlanta penitentiary has been deferred indefinitely, and we are seeking congressional concurrence to allow the facility to remain operational.

To maintain the appropriate level of medical care in our prisons, an increase in positions is requested to allow us to begin the hiring of civil service physicians and dentists. This is required because of the phasing out of the Public Health Service hospital system.

For the buildings and facilities program in the Bureau of Prisons, the level requested will fund minor repair projects and pay-

ments under the lease/purchase agreement for the Oxford, Wis., facility. Decreases reflect the nonrecurring costs associated with rehabilitation and renovation projects and planning and site acquisition.

For the national institute of corrections program, the request will allow for the delivery of training and technical assistance services to State and local correctional agencies at effectively the same level as 1982.

STATE AND LOCAL ASSISTANCE

The Office of Justice Assistance, Research, and Statistics includes the Law Enforcement Assistance and the Research and Statistics appropriations. In keeping with the Department's commitment to provide necessary support to State and local criminal justice systems in the areas of research, evaluation, and statistical collection and analysis, the Department is requesting current levels of funding for the research and statistics appropriation. This appropriation includes the National Institute of Justice and the Bureau of Justice Statistics. In these areas, we believe that Federal funding can be utilized effectively on a selected basis to promote long-term improvements in the operation of the criminal justice system.

With respect to the law enforcement assistance appropriation, I am once again proposing that funding for juvenile justice programs be eliminated. This proposal does not reflect a determination that these programs are unwarranted. Rather, it reflects a belief that the major statutory requirements underlying these programs have been substantially satisfied and that further efforts with respect to individual projects are best controlled and funded at the State and local level. Under this approach, individual projects can be framed to respond to local variations in the nature of juvenile criminality and its relationships to adult criminality. This approach also recognizes that crime prevention and control are fundamental responsibilities of State and local governments and fall primarily within their jurisdiction.

OTHER DEPARTMENTAL REQUIREMENTS

The Department's request for general administration includes the elimination of the State and Local Drug Grant program and a minor increase in funding for the Federal justice research program. The drug grant program provides funds to establish operational information exchange facilities which primarily involve and serve State and local law enforcement organizations. As I have said, activities of this nature are properly the responsibility of State and local governments and are best controlled and funded at that level. The increased funding for research is needed to continue efforts in the priority areas of immigration policy, drug enforcement, and violent crime.

The Department of Justice budget request also reflects the proposed transfer of $20.2 million and 333 positions from the Department of Energy and $1.3 million and 32 positions from the Department of Education. These transfers are part of the President's proposal to abolish these departments. While I am not in a position to discuss these proposals in detail, these transfers would

include our assuming responsibility for energy litigation under the Emergency Petroleum Allocation Act and for civil rights enforcement and litigation activities from the Office of Civil Rights in the Department of Education.

In conclusion, I am requesting the authorization and appropriation of a 1983 Department of Justice budget which supports the Federal law enforcement levels that the Congress has thus far made available for 1982. I urge you to join with us again in this commitment to law enforcement. I also ask that you support us in the elimination of those programs for which the limited Federal dollar is no longer available.

Thank you, Mr. Chairman.

Senator SPECTER. Thank you very much, Mr. Attorney General.

Beginning on the issue of juvenile justice, which is a subcommittee responsibility that has been assigned to me, I note your statement on page twelve, "This proposal does not reflect a determination that these programs are unwarranted." For fiscal year 1981, the previous administration had programmed $135 million, which is an increase from $100 million in fiscal year 1981, and the Congress last year appropriated $70 million in a compromise position. I have had tremendous response, being the chairman of the subcommittee, from people who are concerned about juvenile justice from across the country contending that there were many important projects which had to be completed and bringing to me a wealth of information about the difficulties of the juvenile justice program, crowded dockets, problems in detention, enormous difficulties in many of the States.

Would you consider it out of line if we maintained the $70 million figure again this year to, so to speak, limp along and try to carry out as best we can some of those juvenile justice functions?

Attorney General SMITH. Mr. Chairman, this is one of those hard choices that we had to make. We would not support such a request. We believe, as I have stated here, that this is a program, desirable as it is, which should be funded at the State and local level. In addition, we think that the goal that the original legislation setting up this program was designed to accomplish at the Federal level has been met. In other words, the statutory obligation has been fulfilled. It is now an appropriate time to transfer those functions to the State and local governments.

Of course, as I have indicated in my statement, and this information is based on the findings of the Task Force on Violent Crime, the relationship between adult criminality and juvenile criminality will vary from area to area. This kind of a program can really better be tailored to the individual localities if it is conducted on a State and local basis.

Senator SPECTER. Mr. Attorney General, are you familiar with the recent disclosures about problems in juvenile institutions in the State of Oklahoma? There was an extensive series of media reports, and our subcommittee conducted hearings which were participated in by both of the Senators from Oklahoma, Senator Nickles and Senator Boren, which disclosed substantial problems with the treatment of juveniles in the Oklahoma institutions.

Attorney General SMITH. I am generally aware, yes.

Senator SPECTER. It is my thought that the existence of that kind of a problem in a State like Oklahoma, as intense as those problems were, underscores the need for a continued and active involvement by the Federal Government in the juvenile justice program. I wondered if you had any thought about your own response to the Oklahoma problem as it relates to the department's plans to zero out the juvenile justice program.

Attorney General SMITH. Once again we, think that this issue should be treated as an Oklahoma problem. True, I suppose every agency would prefer to have more funds than it has, more resources. But we have to make some hard choices. We have to think of the Department of Justice's budget which, incidentally faired quite well overall, but there are some areas where we believe it is appropriate to make some reductions. We think that this is one of them.

As I said in my statement, this is no reflection at all on the desirability or need for that kind of program. We just think it should be done on a local level.

Senator SPECTER. Well, it is fine to treat it as an Oklahoma problem if Oklahoma will treat it as an Oklahoma problem; but, when Oklahoma does not, is not that precisely the time that the Federal Government has to step in?

Attorney General SMITH. I would disagree with that, Mr. Chairman. I certainly would never support a proposition that, if a State does not take care of its own, that the Federal Government should step in and do it. That would be, to me, sort of the height of irresponsibility on the part of the State not to perform a function it should perform on the reliance that not doing so will cause the Federal Government to step in and take it over.

Senator SPECTER. Has not that been the purpose of the juvenile justice program, where there was not a segregation of adult and juvenile offenders, that there were some Federal standards applied? Has not that been the history of Federal involvement? When the States did not accord proper treatment or constitutional rights to various classes of citizens including juveniles, that it was an area of appropriate Federal action?

Attorney General SMITH. Well, that has been done in the past and in some areas it will probably continue to be done in the future. But we certainly do not think this is one of those areas.

Senator SPECTER. What would the response be? Speaking as the chief law enforcement officer of the Nation, if the Oklahoma juvenile institutions mistreat juveniles, would you think that the Department of Justice and the Federal Government have no responsibilities in the area?

Attorney General SMITH. Well, I really could not respond to that kind of a hypothetical question——

Senator SPECTER. It is not hypothetical, Mr. Smith.

Attorney General SMITH. I can see emergency situations where the Federal Government might have to step in. But, insofar as dealing with the juvenile problem itself in Oklahoma, that is Oklahoma's responsibility.

Senator SPECTER. But it is not hypothetical. The evidence which has been presented in this hearing room was that the Oklahoma juvenile authorities are not taking care of the situation properly.

And that is an area of concern which I have as Chairman of the Juvenile Justice Subcommittee to see to it that there is at least a residuum, a minimal amount of Federal funds, so that we can have a look at what is going on in the juvenile crime picture.

Attorney General SMITH. Mr. Chairman, I cannot subscribe to the proposition that, if a State is not properly performing a function it should perform, that for that reason alone the Federal Government should step in.

As I say, I was not privy to the hearings that took place here, and therefore I am not knowledgeable with respect to all of the specifics in the Oklahoma situation. But, in my opinion based upon the proposition that Oklahoma is not properly handling its juvenile justice program, that alone should not be the basis for the Federal Government to step in.

Senator SPECTER. Well, without unduly prolonging this specific line of questions, I would like to send you the materials because it is not hypothetical. It is based upon a substantial amount of hard evidence, although the hearings are not concluded.

Attorney General SMITH. We would be glad to certainly take a look at that and give you our opinion after having reviewed it.

Senator SPECTER. I would appreciate it if you would, specifically as that situation has an effect on the program for juvenile justice nationwide.

Attorney General SMITH. Yes.

Senator SPECTER. On the subject of juvenile justice as it relates to another statement you made here today and which you have made in the past on the appropriateness of Federal surplus property being directed to detention facilities, there is a naval home in the city of Philadelphia which the district attorney has been very anxious to have used for juvenile detention facilities. There have been substantial efforts made on this Philadelphia naval home to have it so applied. The GSA has a different attitude than the one you have expressed. Operating under directions from OMB, they want to sell it for the top dollar. That conflicts directly with the program you have announced, in a very specific, concrete case where the home would be well suited for juvenile detention facilities.

Where does the Philadelphia district attorney go to get some help on that, Mr. Smith?

Attorney General SMITH. I am not familiar with that situation. As you know, there is legislation pending which would provide for the transfer of facilities such as the one you refer to at less than market value. I cannot tell you what the status of that legislation is, but it has not been enacted. How that would affect the situation that you are referring to, I do not know. We are most anxious to cooperate to the fullest extent in this area because this is an area where from a law enforcement perspective, much needs to be done.

As a matter of fact, we would certainly be glad to look into it. We have had very good success in other situations in transferring property to the States to assist in other situations. I do not know what is holding this one up but I will be glad to find out.

Senator SPECTER. Well, fine. I was reluctant to burden you with another problem. I already offered the Oklahoma juvenile institutions. I am glad to have, in a spirit of reciprocity, your making the offer to take a look at Philadelphia's juvenile detention facilities.

But I think that would be most appropriate because this would appear to fall under the umbrella that you have articulated.

Attorney General SMITH. Yes, it would.

Senator SPECTER. Mr. Smith, moving on to the issue of the Attorney General's Task Force on Violent Crime and the subject matter of law enforcement assistance as it has been administered under LEAA or under additional plans, the task force recommended, I think in recommendation No. 53, that there be continued Federal assistance to programs which have worked. In the past LEAA has had as much as $1 billion a year authorized and as much as $870 million actually appropriated in 1 year on LEAA programs.

Last week in this hearing room we had consideration of H.R. 4481, which has passed the House. We had Congressman Hughes and Congressman McClory testifying about that measure. There is substantial support on the Judiciary Committee of the Senate for some version. Would you think it appropriate to allocate some relatively lesser sum, say in the neighborhood of $175 million, which Congressman Hughes has in mind, or $125 million, which some of the rest of us have in mind, to fund implementation of the best LEAA programs which have been proven successful and to finance new research, innovation, and demonstration projects?

Attorney General SMITH. The administration, as you know, does not support that bill. Once again, it is no reflection on either the goals or the desirability of that legislation. Rather, it involves additional resources which the administration feels should not be spent in that area. We do have the experience of LEAA. By and large, it is considered to have been a failure. But, as you have indicated, in some areas there have been successes. We think it is most appropriate for those successes to be continued; but, once again, we think they should be continued on a State and local level.

Senator SPECTER. Would you say that was like the juvenile justice program, just barely off the edge of what the Federal Government can afford, but, if we could afford more, it would come close to the kind of programs which you would like to see, if we could afford them?

Attorney General SMITH. That is possible.

Senator SPECTER. Well, we are really trying to get your views, of course. And I understand your position on juvenile justice and on LEAA: You simply do not have enough money to be able to afford those programs.

But I take it those would come very high on the list of priorities that just did not make the cutoff line.

Attorney General SMITH. Well, we certainly recognize that there were aspects of LEAA that were considered to be successful. To the extent that there are resources available, preferably on the State level, we certainly would be in favor of perpetuating those successes.

Senator SPECTER. And you would not be outraged if the Congress disagreed with your views on LEAA and came up with a modest sum of money? Your outrage level would not be surpassed with one of those programs?

Attorney General SMITH. Well, as a matter of fact, I have often tried to measure my outrage level, and I found that, based upon what has happened up to now, it has not reached a crisis point.

Senator SPECTER. You had a lot more grounds for outrage in the course of the past year and 3 months than something like this?

Attorney General SMITH. Yes, indeed, and from some areas other than Congress.

Senator SPECTER. Well, we are glad to be in another category.

Mr. Attorney General, recently Vice President Bush in a rather dramatic way announced the administration's program on combatting the drug problem in south Florida and appears to have brought into play substantially more resources than those under the traditional jurisdiction of the Department of Justice.

Is there some new structure which is necessary to institutionalize what is going on now? How can we bring some aspect of the seapower of the United States from the Department of Navy under the control of the Attorney General so that, as the chief law enforcement officer, you can exercise powers in those related fields?

Attorney General SMITH. Actually, Mr. Chairman, that currently is being developed. As you know, the changes in the Posse Comitatus Act have enabled us to make use of naval resources. We are in the process of, you might say, tooling up so that we can more effectively utilize the additional intelligence and other resources that are made available in this effort.

We also think that much remains to be done in terms of coordinating the efforts of the various agencies of Government. We are now directly in the process of attempting to accomplish that.

Senator SPECTER. Do you need some more legislation?

Attorney General SMITH. Well, we need legislation in certain areas, but not with respect to coordination. We think we can accomplish that under existing legislation. It is a matter of appropriate administration. We do have, of course, various items of legislation pending which deal with this problem such as bail reform, sentencing, the Tax Reform Act, and the freedom of information amendment. As a matter of fact, there is a pending item which addresses even the desirability of providing for the forfeiture of land on which drug crops are grown and so on. So, legislation could be helpful in that area.

Much, however, can also be done in the area of coordinating the efforts of the various Departments: State, Treasury, CIA, and so on.

As you know, we have taken a major step, one which is proving to be highly successful in connection with the combination of the Drug Enforcement Administration and the FBI. I think that may turn out to be one of the most dramatic and most effective steps in the drug enforcement area that has taken place in modern times.

Senator SPECTER. Mr. Attorney General, moving to another subject, beyond the matters which relate directly to your testimony, I think we have covered at least the highlights on my mind. The Senate had extensive hearings on Senator Williams, as I know you are aware. What is your attitude toward the pending resolution by Senator Stevens and Senator Cranston for a Senate investigation of the FBI on Abscam?

Attorney General SMITH. Well, as you know, Abscam was undertaken and essentially accomplished during a prior administration. We do not have what you might call direct knowledge of what happened. We do understand that every step that was taken by the FBI during that period was taken in close coordination with the

Criminal Division of the Department of Justice and that the steps and procedures that were followed were proper. Of course, the courts that have passed on that subject up to now have confirmed that conclusion.

It is true that there is some misunderstanding as to what happened and some general lack of knowledge of the facts. And there may have been specific occurrences and specific situations of which we are not aware. To the extent that the hearings would provide a better understanding of what happened in those situations, I would say they could have an affirmative effect.

Senator SPECTER. Could have an affirmative effect?

Attorney General SMITH. To the extent that hearings are necessary in order to provide better public understanding and better understanding on the Hill as to what did happen in those cases, the hearings could be beneficial.

Senator SPECTER. Beyond the cases which have been litigated—and my own view is that Senator Williams had no defense of entrapment at all, that a highly sophisticated, experienced public official has no justification for taking a bribe under any circumstance—there is some concern about cases which did not come into public view, where they were not brought to court. One of those cases involved Senator Pressler. He was brought to a meeting, from all we know, without any basis to believe that he had done anything wrong or had any inclination to do anything wrong. And that matter came to a head when Director Webster made a statement on ABC television that the FBI had investigated only those who had committed crimes or would like to commit crimes. Director Webster, after having negotiations involving Deputy Attorney General Schmults and Associate Attorney General Giuliani, both of whom performed admirably, in my opinion—I was present at the meetings—gave Senator Pressler a letter saying that that standard did not apply to him.

It raises a question as to why Senator Pressler was targeted. Such actions have raised a question in many minds.

Do you think that an inquiry into the procedures in matters like that would be an appropriate inquiry by the Senate?

Attorney General SMITH. About all I can say, without getting into individual cases, would be that, to the extent that such a hearing would develop the facts and provide better understanding as to what did happen and therefore provide the basis for an understanding of the procedures that were followed and why they were followed, the hearings would be appropriate. If there were any occurrences that should not have taken place, of course, we would be most interested in knowing about those and making sure they do not happen again.

Senator SPECTER. Mr. Smith, you would agree as a general proposition, would you not, that the FBI or the Philadelphia district attorney or any law enforcement agency ought not to go out to investigate somebody without any cause or suspicion or complaint or a factor leading them to a given individual; that there ought to be something? It would not have to be the probable cause needed to get a search warrant, but there would have to be some basis or some reason to proceed to investigate someone before an investigation would be appropriate, would you not agree?

Attorney General SMITH. Well, I would assume so. It is pretty hard to answer that question in a vacuum, but I would certainly assume so.

Senator SPECTER. That is a question which has bothered some people. I spent a long time in the investigative line and never authorized an investigation where we did not have some reason. Sometimes it would be a complaint. Someone would make a complaint. It might prove to be founded or not, but it would be a reason to initiate an investigation.

Attorney General SMITH. I am sure that would be the process the FBI would follow. As a matter of fact, resources are sufficiently scarce that they do not have the time and, I am sure, nor the inclination to be engaging in witch hunts or doing things that do not have some basis.

Senator SPECTER. Well, there is not enough time to do all the investigations that you have to do that are important, let alone pick somebody at random or say: We don't like X, and we're going to investigate X because——

Attorney General SMITH. Certainly not, certainly not.

Senator SPECTER. On the subject of the Freedom of Information Act, is there any provision of law, to your knowledge, that, if an individual requests his file under the Freedom of Information Act, that that in any way authorizes the governmental agency which discloses his file to make that file public generally or make it available to anyone other than the requesting individual?

Attorney General SMITH. This is under the Privacy Act?

Senator SPECTER. Under the Freedom of Information Act.

Attorney General SMITH. If he asks for his file?

Senator SPECTER. For his file.

Attorney General SMITH. Well, none that I know of, but I would have to check that. I really cannot give you a categorical answer on that without checking it.

Senator SPECTER. But nothing that comes to your mind at the moment?

Attorney General SMITH. Not offhand, no.

Senator SPECTER. Mr. Attorney General, Community Legal Services came under a piercing analysis last year. After a lot of debate, we finally ended up on a reduced program with some limitations as to what Community Legal Services could do. Would you say that that would be an appropriate basis to continue on for the next fiscal year? Or how would you approach the CLS issue?

Attorney General SMITH. As you know, that is not within our jurisdiction.

Senator SPECTER. I know. It came to my mind when you talked about your own civil litigation department and your beefed-up attitude and activities there. I just wondered what your view was as the Nation's No. 1 lawyer.

Attorney General SMITH. The administration position is that this is an appropriate function to be carried out by the States and localities rather than by the Federal Government. Nevertheless, and the position taken by the Congress through the appropriation is the one that is now operative, and we accept it.

Senator SPECTER. What do you think should be done next year?

Attorney General SMITH. I really cannot answer that question because it is too soon. I would suspect that the administration's position will be the same as it has been in the past.

Senator SPECTER. We have been joined by the distinguished Senator from Montana, Senator Baucus. Would you care to question the Attorney General?

Senator BAUCUS. Thank you, Mr. Chairman.

Mr. Attorney General, I join in the comments and questions, so far as I heard them since I arrived, from Senator Specter concerning the activities of the FBI with respect to Abscam. I think all of us are a little bit leery of potential investigations on the part of FBI against anybody, citizens, Members of Congress who clearly do not have any prior indication of criminality.

I do not know the degree to which the FBI has entered into that arena. I suspect to some degree it has. To the degree it has, I hope that you undertake every effort to insure that it does not happen again and to the point of setting up some safeguards, some regulations, some standards, something of some kind which shows overt and express indication that it will not occur again.

Attorney General SMITH. Senator, that assumes something has happened.

Senator BAUCUS. As I say, I am not sure that it has. If it has—and that determination is something that is going to come before this Congress; that is, this Congress has not decided whether or not to, the degree to which to find out whether any of that happened or not, but there are some indications to this Senator anyway that the FBI has probably acted in that area.

I have another interest I want to talk to you about. I know it is an interest that is shared by the chairman of the committee. That is the raft of bills that have been introduced in the Congress limiting the Supreme Court and in some cases lower Federal court jurisdiction over Federal constitutional questions. I raise this subject because, as you know, it is a heated subject. It is one that is debated very thoroughly. It is one that has enormous implications for our constitutional form of Government. That is, if these bills do become law and if there is some confrontation between the legislative branch and the judicial branch of our government, it is difficult to predict what the consequences will be. Certainly, if these statutes do pass and if they are held as constitutional, it is going to revolutionize, to say the least, our form of Government very much adversely, in my judgment.

Second, I raise this issue because I am a bit disturbed that the Department has been curiously silent on this issue and silent for a long period of time. Many Members of Congress, myself included, have asked the Department's views on these bills. So far, we received nothing, no view, just silence.

I am further a little concerned because the Department is not reluctant to jump into the foray on lots of other issues that are very controversial. School busing, for example, the Seattle cases come to mind. The Department got involved in the tax exempt status schools, for example, and the administration's views of affirmative action. Yet, when it comes to attempts to prohibit or limit Supreme Court jurisdiction to Federal constitutional issues, silence.

Now, the Department might say: Well, there are two sides to this issue. That is one possible explanation. But the raft of people who do not have a particular social agenda, that is the number of individuals and organizations who are looking at this on the basis of neutrality, just looking at what is best for our form of government, that is people who do not have a social agenda but who feel these bills as unconstitutional are enormous. ABA, for example, is opposed to these bills; they issued a formal statement. Former Justice Potter Stewart has come out publicly opposed to these bills; he says they are unconstitutional. The American College of Trial Lawyers has issued its statement in the same vein, finding these bills unconstitutional. Many former Solicitors General take the same view. Former Solicitors General Cox, Griswold, and Borke all view these bills as unconstitutional. Former Attorneys General take the same view. The State supreme court chief justices, as you know, down in Williamsburg not too long ago issued a statement in opposition to these bills.

I am wondering when the Department is going to inform the Congress of its view. When is the Department going to take a stand on these bills?

Attorney General SMITH. Senator, I disagree with you that the Department has been curiously silent. We are not in the business of rendering opinions in a vacuum. You have said correctly that there are perhaps 30 bills that have been introduced. Those bills fall into different categories and they do different things. They provide for different answers.

None of those bills has moved. To the best of my knowledge, not a single bill of the ones that you have mentioned has moved out of committee. At such time as a bill were to move, as it develops its own legislative history and at such time as we are called upon to render an opinion with respect to that bill, we will certainly be most happy to provide. This is indicated by the fact that we have been asked for an opinion by Chairman Rodino with respect to the Department of Justice fiscal year 1982 authorization bill, S. 951. That opinion will be arriving on his desk fairly soon.

It is easy for groups outside to take positions on "bills." We cannot do that. We have to render an opinion on a specific bill with a specific legislative history. Something that is more specific than just bills. You said that all of these people have taken positions on these bills and that they are unconstitutional. There is no way that we can do that because some of those bills could quite possibly be unconstitutional; other bills quite possibly could be constitutional. They do different things. Some bills deal with the jurisdiction of the Supreme Court. Some deal with jurisdiction of the lower courts. Some deal with the remedies that courts can grant.

As a matter of fact, I ran across an interesting bit of information. This year, I think, is the 50th anniversary of the Norris-LaGuardia Act, which is an act which limited the power of Federal courts to grant injunctions. As I say, that was a bill that did certain things, the same way that the bill that has now passed the Senate and is pending action in the House; that is a bill that does certain things. We are going to render an opinion on that based upon the specifics of that bill.

We are not bashful or hesitant at all in rendering opinions. As I say, if any of those bills were to move and if we were asked our opinion on those bills, we will be most happy to provide it. But we do not do it in a vacuum and we do not render an opinion on whether "bills," are constitutional or unconstitutional.

Senator BAUCUS. I appreciate what you are saying, but these bills are not in a vacuum, as they have moved. In fact, three are on the Senate Calendar right now. Not only that, not too long ago, it was not a bill, but there is an amendment prohibiting Supreme Court jurisdiction in the school prayer issue. That passed the Senate not too long ago. But there are three bills now on the calendar. One is a school prayer bill.

I have several times asked the Department its specific views on several of these bills. You are right; some only limit Supreme Court jurisdiction, some lower Federal court, and some go to remedies.

My first question would be, though, with regard only to those bills that limit Supreme Court jurisdiction over Federal constitutional questions, not going to the lower Federal court jurisdiction removal issue or the remedy question, only Supreme Court removal. That to me is pretty clear. Does the Department have a view on those bills only?

Attorney General SMITH. We will certainly have a view at such time as a specific question is presented to us.

Senator BAUCUS. How do we present the question to you? I am presenting it to you right now. How else do we do it?

Attorney General SMITH. If a bill moves——

Senator BAUCUS. There is a bill right now on the Senate Calendar, S. 1742, the Supreme Court removal of school prayer. It is on the calendar. It just takes a motion to call it up.

Attorney General SMITH. Well, so far as I know, it has not been called up.

Senator BAUCUS. So far as I know, it has not, too.

Attorney General SMITH. In fact, I do not know of any of those bills that has been called up.

Senator BAUCUS. No, they have not been called up. But how can I formally, how can this committee, how can anyone formally, informally ask the Department its view on a bill that could come up tomorrow, could come up next week, next month, who knows?

Attorney General SMITH. Of course, in some cases—I do not know whether it would apply to the bill that you are talking about—you do have a matter of legislative history.

Senator BAUCUS. Excuse me?

Attorney General SMITH. You have a question of legislative history. In other words, our principal function is to advise the President with respect to matters of this kind when a bill reaches his desk. By the time that happens, when it gets through the Congress, the bills have legislative history. I cannot say with respect to the bill that you are talking about that it would make a difference, but it could. It could well make a difference with respect to the one that has moved.

Senator BAUCUS. I think this Congress would be very interested whether in the opinion of the Department of Justice S. 1742 is constitutional. I think it would have a very direct bearing on how

Members of Congress vote. It would be an influential factor, I am sure, in the minds of many Members of Congress; I grant you not all in every circumstance. But I think it will have some bearing and significant bearing.

My guess is that bill will come up probably in about 30 days. Could the Department inform the Congress of its view of the constitutionality of that within 30 days?

Attorney General SMITH. We would certainly take a look at that.

Senator BAUCUS. Just so I understand, can——

Attorney General SMITH. Senator, we do not see any point in rendering opinions with respect to hypothetical situations. But, if there is a bill which is seriously moving and we are asked our opinion with respect to the constitutionality, we will provide it.

Senator BAUCUS. I am sure you understand the process in the Senate. But, when that is called up, it cannot move any farther; it is on the floor of the Senate.

Attorney General SMITH. Exactly.

Senator BAUCUS. And it is either voted on or it is not voted on. But it cannot go any farther. I mean, that is the final stage in the legislative process in the Senate. We do not have the benefit of a committee hearing here. Senator Helms has used the Senate rules to avoid the committee. He has found a way to get that bill directly on the Senate Calender. It is up to the majority leader to call up that bill when he sees fit. My expectation is the probabilities are high that bill will come up within, say, 30 days. So, there is a history. You cannot have more history than that. You cannot go much further. If it is called up, if it is voted on, if it is voted on, if it is passed, that is the end of it in the Senate, unless it comes back in conference in some way.

So, it will have a history. Anyway, that issue has had a lot of history.

Attorney General SMITH. Yes.

Senator BAUCUS. It will not be the first time we will have looked at it.

So, could we have an opinion of the Department within 30 days as to the constitutionality of that bill, S. 1742? Going only to the Supreme Court removal.

Attorney General SMITH. As a matter of fact, what I would suggest, Senator, that you send us a letter on what it is you would like, why we will certainly respond as we think we should.

Senator BAUCUS. I just think it is very important that the Department respond. In many ways this committee and this Congress is looking for guidance on Federal constitutional questions. The Justice Department's view is very, very important, particularly when the Justice Department, as all Members of Congress, swear an oath to uphold the Constitution. I think there is—not a tendency for Members of Congress and for the executive branch to forget that, but it is helpful if we are reminded of it.

I just encourage you very strongly to respond when I do write that letter.

I will be very candid with you. I am a little nervous that I will not get a response within 30 days. Can you give me assurance that I will get a response in 30 days? That is a response speaking directly to the question.

Attorney General SMITH. Well, I would have to see the letter first, but you will certainly get a response of some kind.

Senator BAUCUS. Well, that is my worry. That is what it will be: of some kind.

Why the delay? Why the silence? Why isn't the Department——

Attorney General SMITH. There really is no silence. As I say——

Senator BAUCUS. What is the Department's view, then, on these bills?

Attorney General SMITH. Let me give you an example, the so-called busing rider that passed the Senate. We were asked for an opinion, and we are going to give it. But we knew exactly what the bill was. We knew where it had been. We had a copy of it in front of us. And we are going to render an opinion on it.

I might say, by the way, that these are not uncomplicated opinions. They involve areas where very respected scholars have strongly opposing viewpoints. It is just not a matter of looking at a bill and saying: "We think it's constitutional, or we think it's unconstitutional." We would not be giving you a response like that.

Senator BAUCUS. Did you know that the prior administration did take a view that these court-stripping bills are unconstitutional?

Attorney General SMITH. Well, I really do not know what the prior administration——

Senator BAUCUS. And do you know that your present Office of Legal Counsel is also of the same view?

Attorney General SMITH. Well, I——

Senator BAUCUS. Is that the view of the Office of Legal Counsel?

Attorney General SMITH. No, I do not know that. We have not come to a conclusion on that subject. If you are talking about the Supreme Court jurisdiction, we have not come to a conclusion on that subject.

Senator BAUCUS. Has the Office of Legal Counsel given your office a recommendation?

Attorney General SMITH. We have considered both sides of that question indepth and are in the process of doing just exactly that.

But we cannot answer a question unless we tie it to a specific question.

Senator BAUCUS. The specific question I am going to ask you right now.

In the view of the administration or the Department of Justice, is S. 1742 constitutional?

Attorney General SMITH. Well, I cannot answer that question.

Senator BAUCUS. I am asking now. Can I have a response in 30 days?

Attorney General SMITH. If you will direct a request to us, we will respond to it.

Senator BAUCUS. I am requesting as directly as I possibly can.

Attorney General SMITH. Well then I am saying, if you send something to us and make reference to a particular bill so we can answer a specific question, why, we will respond somehow.

Senator BAUCUS. I appreciate that. I do hope that you will respond forthrightly and we do not waste time just beating around the bush on this.

Attorney General SMITH. Well, we normally respond forthrightly.

Senator BAUCUS. I hope that word normally means definitely so in this case.

Thank you, Mr. Chairman. Mr. Chairman, could you please keep the record open so that we could get the response and put it in the record of this hearing, please?

Senator SPECTER. I think that would be appropriate, Senator Baucus, without objection.

Mr. Smith, are you in a position to tell us what the Department's view is as to the constitutionality of S. 951?

Attorney General SMITH. Not yet. We will be submitting that in writing to Chairman Rodino within the next week.

Senator SPECTER. Mr. Attorney General, the issue is troublesome to me, too, limiting court jurisdiction. I understand your policy in not wanting to issue advisory opinions. That really is a judgment that you have to make. My own sense is that it would be helpful if you would. The problem that I find on it is that one step leads to another. If you could limit court jurisdiction on busing, which I believe S. 951 does, then you can limit jurisdiction on first amendment freedoms. And then the step beyond that is to limit the jurisdiction of the court to decide whether it has jurisdiction on the prior bill. If you could limit jurisdiction, what is to stop the Congress from enacting legislation which says the Supreme Court of the United States has no jurisdiction to consider the constitutionality of S. 951 and then a third bill which says the Supreme Court of the United States has no jurisdiction to consider the constitutionality of the bill which took away its jurisdiction to consider the constitutionality of S. 951?

And if the Court then takes those issues and says they are unconstitutional, as I think plainly the Court will, the Congress could then say what the Court did was a nullity because it had no jurisdiction, just as the Court has said what the Congress did was a nullity.

Attorney General SMITH. Well, as a matter of fact——.

Senator SPECTER. And then you really will have the question because it is up to the marshal to decide which law to execute.

Attorney General SMITH. As I say, legal scholars take widely differing views on this question. I talked to one of them with respect to what the consequences would be on limiting the Supreme Court jurisdiction. He felt that it was constitutional. He said that Congress has the power to deprive the executive branch of money. In other words, Congress could, by not passing any appropriations bills, starve the executive branch to death, as it were. But it has not, and it will not, and it would not. So, the existence of the power does not necessarily mean that it would be exercised. That is one argument that has been made by somebody who maintains that this would be a constitutional exercise.

You have arguments on the other side. So far as I can tell, it is anything but a black-and-white question. You not only have the issue of constitutionality; you have the issue of wisdom. But the point is that this not a matter of just saying this is constitutional or it is not constitutional. It is a highly complicated question with very strong arguments on—I was going to say both sides; I guess I should say all sides.

Senator SPECTER. There is another aspect that I find of concern. That is where the Congress enacts legislation on the authorization bill which deprives the Department of Justice of jurisdiction, the language limits what the Department of Justice can do. In that kind of a situation you really have a role beyond giving the President advice. You really have a role to protect your own jurisdiction and your own power.

Attorney General SMITH. We have some question about the wisdom of using the Department's authorization bill as a vehicle for this kind of legislation. But that is another matter.

Senator SPECTER. My own thinking is that the Congress cannot limit the executive's authority. The Department of Justice is not provided for in the Constitution, but the executive branch is. There is a necessary implication about a Department of Justice. The Congress cannot tell the Department of Justice what to do on constitutional issues. We can tell you what to do on matters which are not constitutional issues, but we cannot take away your power to be, exist, the executive's power to be. I do not think that the Congress can starve the executive branch.

There is very little litigation on this. We have a fascinating piece of litigation in the Pennsylvania Supreme Court, where the courts "mandamussed" the Philadelphia City Council to appropriate money for the courts. The legislative branch would simply not do it. The argument was constitutionally the legislative branch had the power. And the Supreme Court of Pennsylvania said no you don't; there has to be a court system, and you cannot starve them.

They were giving them some money. The question was how much. The power to starve was not viewed to be a constitutional power.

But we will not shed too much further light on the subject. It is worth a few moments of our time so that you know how Senator Baucus feels and how I feel about it. You have to take your own road.

I would like to ask you just one more question, which staff is very anxious to have asked. Then we will be submitting questions to you from Chairman Thurmond and from Senator Mathias. We will hold the record open for the balance of the day for any questions to be submitted in writing by any other committee member who could not be here.

[Material referred to follows:].

U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

AUG 16 1982

Honorable Strom Thurmond
Chairman, Committee on the
Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

On behalf of the Attorney General, I have enclosed the responses to the follow-up questions submitted in connection with his testimony on this Department's Fiscal Year 1983 appropriation authorization bill.

Sincerely,

Robert A. McConnell

ROBERT A. McCONNELL
Assistant Attorney General
Office of Legislative Affairs

Enclosures

I. QUESTIONS FROM SENATOR THURMOND

Joint State and Local Law Enforcement Grant Program Related to Drug Trafficking and Organized Crime.

Q. The Department's request reflects again no funding for the Joint State and Local Law Enforcement Grant Program. Last year, this Committee and the Senate, in recent action on S. 951, added $12M for this program to the President's request. Could you clarify for the Committee why the Administration is not seeking to continue this program?

A. The Department of Justice has no objection to the concept of state and local governments exchanging intelligence information for the purpose of enhancing their own law enforcement efforts. The Department does object, however, to the imposition of an oversight role over projects that it has no effective means of supervising and which are properly within the province of state and local law enforcement. As these programs have developed, the Department has grown increasingly skeptical about their cost effectiveness, their protection of individual privacy rights, and their stewardship of federal funds.

The Department has frequently questioned the track record of the Multi-State Regional Intelligence Projects. Intelligence projects in themselves do not produce arrests by law enforcement officials. They simply provide data that help others to take action. Therefore, claims of success tend to overemphasize the particular project and to minimize the costs involved in identifying and apprehending criminals.

We are also concerned about how some of these projects have been administered. For example, the financial records of the Rocky Mountain Information Network (RMIN) were in such disarray that reconstruction was necessary to ascertain how much had been spent. A former official of this project is under investigation by the State of Arizona for the falsification of travel vouchers and procurement irregularities. In addition, financial irregularities have been noted in another project where the chairman of the policy board resigned amid allegations of misuse of state funds. Further, the Internal Audit Staff of the Department indicates that unsworn officers may have engaged in investigative activities at the Regional Organized Crime Information Center (ROCIC), a violation of the terms of the grant.

Paramount to all these concerns, however, is a recognition of the fiscal realities which demand that the Department concentrate available resources toward the achievement of its primary mission, the enforcement of federal law. With decreasing resource levels for most federal law enforcement agencies, the Administration has recognized that monies invested in other law enforcement programs would have a greater utility in relation

to federal law enforcement responsibilities than a similar investment in the regional intelligence projects.

It is the Department's view that, if the participating jurisdictions are convinced of the effectiveness of the regional intelligence projects, they should supply the necessary funds and accept responsibility for compliance with the principles of sound management and the protection of individual rights.

Funding Alternatives

Q. Recently, the Department recommended establishing a "user fee" for certain institutions that would use the FBI's identification services. What other funding alternatives has the Department considered and could you provide us with some examples?

A. The Department has been discussing a number of proposals that would institute a "user fee" concept to help fund some of our activities. The concept allows the Department to use funds realized from the payment for certain services and activities we perform. These funds would be credited directly to the Department's various appropriations rather than being returned to the miscellaneous receipts of the Treasury.

Some of our proposals, such as the setting of fees for the U.S. Marshals' service of process and the crediting of receipts realized from the seizure of assets by the Drug Enforcement Administration for paying "moiety" rewards to informants, have been recommended to this Committee. The Committee had included them in the FY 1982 authorization bill. Unfortunately, in the case of the service of private process, this amendment was deleted by the final Senate action on S. 951.

As you know, our FY 1983 authorization bill, S. 2567, again includes the proposals for fees for Marshal's service of process and "moiety" awards. In addition, a new proposal, section 7 of S. 2567, would authorize the FBI to establish fees to process the identification of records for state and total enforcement and licensing agencies and banking institutions. The user fee concept is a very helpful mechanism and we will discuss further with the Committee the implementation of this concept.

Government Litigation Authority

Q. This Committee has always been concerned with any dispersion of litigating responsibility to Executive agencies other than

the Department of Justice. In your estimation, is this still a problem and, if so, to what degree is it a problem?

A. The dispersion of litigating authority to agencies other than the Department of Justice is of the utmost concern to the Department and continues to be a problem affecting litigation activities on behalf of the United States. It is the Department's view that the position of the United States in court can best be presented by strict adherence to the principle of a centralized litigating authority. Such centralization assures the federal government will present a uniform position on legal questions and that a Cabinet officer, the Attorney General, will be able to ensure that there is consideration of the potential impact of litigation upon the government as a whole.

Because of the vital concern about this problem, a Task Force within the Department to examine the issue has been established. This Task Force is chaired by Assistant Attorney General J. Paul McGrath. The Task Force has canvassed all of the litigating Divisions as to the current litigating authority situation and will be evaluating that data and making recommendations to the Attorney General in the near future. It is the Attorney General's intention to consider promptly the recommendation of the Task Force to ensure that the Department of Justice continues in its statutory role as the federal government's litigation arm.

There are several bills presently pending before Congress concerning the Attorney General's litigating authority. These include: S. 1402, the Uniform Motor Vehicle Standards Act of 1981, S. 326 and H.R. 1362, the Small Business Motor Fuel Marketer Preservation Act of 1981, S. 2296, a bill providing that the district courts shall have jurisdiction in Department of Labor Employees' Compensation Appeals Board actions, S. 1327, the Inspector General Amendments of 1981, H.R. 1050, and Federal Information and Privacy Board Act of 1981, H.R. 19, the Cargo Security Act, H.R. 939, a bill to permit citizen suits to recover records wrongfully removed from agency files, and S. 1593, which revises the maritime laws of the United States.

Federal Bureau of Investigation

Q. Last year, this Committee added over $6 million for the FBI's foreign counterintelligence and international terrorism programs. Recently, the Chairman of the Subcommittee of the Senate Intelligence Committee with jurisdiction over these matters indicated his continuing concern that not enough resources are being provided for these extremely vital and important activities. I realize that much of this cannot be discussed in an open session, but could you enlighten us, in

general terms, whether or not you believe sufficient resources are available and will be available to do the job? In addition, I would like you to respond to this in writing.

A. Regarding the FBI's Foreign Counterintelligence and International Terrorism programs, we do share the Congress' viewpoint that these activities are very important and that all efforts must be undertaken to ensure that our responsibilities are met in this area.

It is also important to note, however, that this does not automatically mean that additional budgetary resources are absolutely required. The reallocation of available resources to respond to new challenges as they arise is one alternative. In addition, the Department is continuously evaluating ways to improve the efficiency of our operations--that is, to accomplish more with fewer or static resources. This may involve improved processing of information through increased computer use or other means.

Drug Enforcement Administration

Q. The Committee has emphasized in the past that the Drug Enforcement Administration make new efforts to target the financial aspects of major drug cases. What is DEA doing currently to pursue this type of activity and how has its new relationship with the FBI helped in this area?

A. The Drug Enforcement Administration has become more involved in this area and has scored a number of successes. The FBI will add to the expertise in financial analysis needed to attack the upper echelons of narcotics traffickers that continue to sell drugs.

In the past two years, DEA has substantially increased its efforts to seize the assets of the major narcotics traffickers. In 1980 and 1981 alone, DEA seized approximately $225 million of drug related assets. Examples of current cooperative endeavors include Operation Greenback and Operation Swordfish.

Operation GREENBACK involves the combined resources of the U.S. Customs Service, the Internal Revenue Service and the Drug Enforcment Administration. The operation's purpose is to pursue those individuals and institutions who currently are laundering massive sums of illicitly earned currency on behalf of the narcotic interests throughout South Florida.

Similarly, Operation SWORDFISH's objectives are to (a) launder and track the drug proceeds of known high level drug violators; (b) secure indictments against the violators and

(c) seize the illicit profits and assets of these violators. This operation is a cooperative effort among DEA, the U.S. Customs Service, the Internal Revenue Service, and the Federal Bureau of Investigation.

Q. According to a recent report, almost 40 per cent of all teenagers in America have experimented with illegal drugs. What can be done to curb the availability of these drugs to our youth?

A. Enforcement efforts to reduce the availability of narcotics to our young can be directed from several perspectives, including:

(1) Working in concert with foreign governments in an effort to reduce supply in source countries and to stimulate interdiction efforts in transit countries prior to the arrival of narcotics at U.S. ports and borders.

(2) Developing the best intelligence possible from foreign and domestic sources, to aid the U.S. Customs Service in detecting illegal drugs at the ports and borders.

(3) Conducting criminal investigations involving the major traffickers and bringing them to prosecution before the courts, and providing support, where possible, to state and local criminal investigations and prosecutions.

Immigration and Naturalization Service

Q. The Administration has submitted legislation to reform the immigration and refugee laws. Senator Simpson has introduced his own bill. Both bills recommend tougher enforcement of our borders to stem the illegal flow of immigrants to this Country. In your opinion, are the resouces of the Immigration Service sufficient to make such an effort; and, if not, how much would be needed to do the job?

A. We have reviewed Senator Simpson's bill S. 2222 and the companion bill introduced in the House of Congressman Mazzoli, H.R. 5872. This legislation is similar in many ways to the Administration's immigration proposal and contains the essential elements of a comprehensive reform of our immigration laws. Attached are the Administration's first estimates of the additional budget outlays possibly required to implement S. 2222. (See Attachment A) While these are preliminary estimates and have not been reviewed in the context of the overall budget situation, it is important to note that no provision has been made for any of these costs in the budgets for FY 1983 or later years. Estimated total federal costs range from $781.9 million in FY 1983 to $2.55 billion in FY 1986, a portion of which would be offset by fees. It should also be noted that these costs are largely in the

category of entitlement programs which will result in Federal and State outlays immediately upon enactment.

Juvenile Justice Program

Q. We note the funding for the Juvenile Justice Program again has been eliminated from the Department's FY 1983 budget. Could you explain the Administration's rationale for this elimination of funds?

A. The Administration does not support the retention of the Juvenile Justice Program. It is our position that the Juvenile Justice Program has already largely achieved its original objectives of deinstitutionalization of status offenders, and that its reform mission has been completed. At the same time, we believe that in evaluating the proper federal role and responsibility, it is clear that law enforcement and criminal justice, including juvenile justice, are more appropriately the domain of state and local government. We do, however, believe that it is important to concontinue federally sponsored research in the juvenile area, and this we see being an activity that could be assumed by the National Institute of Justice.

U.S. Marshals Service

Q. For some time the Marshals Service has been responsible for the Witness Protection Program of the Federal government. In your opinion, is the Marshals Service capable of operating this program; and, if not, should the FBI and DEA be given the responsibility of running their own program for protecting witnesses?

A. It is the opinion of the Department that the United States Marshals Service (USMS) is the best and most effective agency to operate the Witness Security Program. The Marshals Service has the most expertise and professional capabilities in this area. This program, which was created in 1970, has grown rapidly and in the ten years of its existence has had over 3800 principal witnesses entering the program, with an average of over two (2) family members.

Although there have been problems in establishing policies and procedures, we believe the program is operating more effectively than ever. Additionally, the logistical support and liaison with the literally hundreds of agencies conducted by the Marshals Service would be a long-term and counter-productive project for another agency to begin.

The Witness Security Program, because of the nature of the protected witnesses (over 95% have serious felony convictions), is fraught with trauma for both the witnesses and their families. Additionally, witnesses, on occasion, com-

mit additional crimes in their relocation area. The Marshal's Service is called upon to handle difficult circumstances such as these.

The Marshals Service, having no vested interest in the prosecution in which the witness is testifying, is the most appropriate agency to ensure that the witnesses are treated equitably. Also, the idea of separate witness security programs would not be cost effective and would result in a number of agencies competing for the same resources.

II. QUESTION FROM SENATOR MATHIAS

Q. I am considering an amendment to the Department's authorization bill to allow for the appropriation of funds to staff a commission that would examine the impact of the antitrust laws on U.S. international commerce and foreign economic relations. Would the Justice Department have an interest in undertaking this study, which the full Senate authorized in 1980 without a dissenting vote?

A. As Assistant Attorney General Baxter and other Administration representatives testified on December 31, 1981, the Administration sees value in such a study only if it addresses the broader question of the international impact of several United States laws and not antitrust alone. However, as all the Administration witnesses who testified then noted, the budgetary priorities of the Administration would place funding for such a study in a decidedly secondary position at present. Absent the very serious budget constraints, there would be value in a properly defined review of the extraterritorial impact of several United States laws, and this Department would be the proper lead agency for such a review.

Despite the budgetary constraints which militate against funding such a study in the light of more important priorities, initiatives are underway which address the issues you raise. The Administration, under State Department auspices, soon will be resuming discussion with the United Kingdom on the impact of a number of American laws apart from antitrust. Separately, we are discussing with the United Kingdom the underlying jurisdictional issues in the antitrust field. Also, the Attorney General met with his Australian counterpart in early summer and continued discussions on ways to reduce tensions caused by United States antitrust enforcement actions. Other initiatives are under active consideration. Thus, while we are unable to support an appropriation or an expenditure for the type of commission Senator Mathias proposes at present, the questions which a study commission would address in part are not being neglected and are the subject of continuing work by the Administration.

QUESTIONS FROM SENATOR BIDEN

TASK FORCE REPORT

Q. Last fall you will recall we discussed the Violent Crime Task Force report. Have you made a decision on the most important recommendation calling for the establishment of a 2 billion dollar program to assist state correctional needs?

A. As the Department indicated in its testimony on S.186, a bill concerning federal assistance to state and local prisons, responsibility for, and control over, construction of state and local law enforcement facilities most properly resides in the state and local governments. The roles of the federal government should be to encourage and assist the state and local governments in upgrading correctional facilities through advisory standards, training, and technical assistance services. Reductions in federal spending are the cornerstone of the Administration's plan for economic recovery. This and other Task Force recommendations that addressed the improvement of state correctional facilities were considered during the formulation of the Department's FY 1983 budget request. In light of the overriding priority for fiscal austerity, we do not concur in the $2 billion expenditure recommended by the Task Force.

Q. You mentioned the program to turn over surplus federal property for states to use for prison space. How many of these transfers have occurred and what have been the costs to states to renovate these properties?

A. Enclosed as Attachment B is a chart depicting the status of property transfers and renovation costs.

Q. Another recommendation of the Task Force was to set-up a small and focused assistance program for state and local enforcement. What is the status of that recommendation?

A. The Department has undertaken several initiatives to address the crime problem at the State and local levels. These include the establishment of Law Enforcement Coordinating Committees by the U.S. Attorneys, establishment of a clearinghouse in the Bureau of Prisons to facilitate the transfer to States and localities of surplus Federal facilities, increased training opportunities for law enforcement personnel, and other measures. In addition, the Department's budget requests reflect a continuing interest in support for research, development, demonstration, and evaluation of methods to prevent and reduce crime. Fiscal realities demand, however, that the Department concentrate the majority of available resources toward the achievement of its primary mission, the

enforcement of Federal laws. We believe, moreover, that funding for improvements in State and local criminal justice systems is principally the responsibility of State and local government.

BUDGET CUTS

Q. Last year I questioned you about cutting cost effective programs like the Tax Division and Criminal Division which tend to be revenue producing. This year in your statement you make similar reference to the benefits of these programs but don't request additional positions. In fact, the 1983 request is 123 positions below the level of 1981 a 9% reduction. Could you please explain the rationale for this?

A. Although the 1983 request reflects an approximate reduction of nine percent in permanent positions for the Tax and Criminal Divisions, the effect on workyears is a decrease of approximately two percent. The overall effect of this reduction will not be negative, primarily because the new position level for these Divisions approximates the current on-board strength. Also, with the continued application of modern technology to the management of the Department's litigation the Department will continue to produce savings and efficiencies. Therefore, neither the quality nor quantity of our current litigation efforts should suffer.

Q. Mr. Attorney General, we now have fewer DEA agents, fewer FBI agents, less assistance to state and local enforcement and crime continues to climb. Isn't it time to admit that a real commitment to the crime problem will cost more money?

A. The Department of Justice, as well as the entire Administration, shares the concern over the crime problem, and the need to combat it in an effective manner. However, we do not believe that this can necessarily be accomplished merely be infusing additional federal funds, or by continuing the same types of approaches which have been tried in the past and proven unsuccessful. It is time to try a different solution and to concentrate on seeking an approach that will work.

The Department has undertaken a number of specific steps which should permit a more effective and less costly allocation of our resources. For example, the DEA and FBI have been directed to cooperate more closely in major drug investigations. Each of the U.S. Attorneys have been directed to establish a Law Enforcement Coordinating Committee that will cooperate with state and local law enforcement officials and will draft detailed plans for a more effective use of federal resources against the worst crime problems. As you

are also aware, through Department initiatives, the Navy and Air Force are now furnishing information to civilian law enforcement agencies. These types of initiatives can be expected to produce measurable results over the long-term and reflect our commitment to the crime problem.

Q. You have stated that this budget will maintain current levels. Those levels as we have agreed on in the past are a reduction from 1981 levels. With crime being the problem that it is how can you say this budget is adequate to fight crime at the federal, state and local level?

A. As set forth in the previous response, we believe that the budget is adequate in that it assumes the adoption of a number of policy and procedural improvements which will strengthen our efforts to fight crime. In addition, every attempt has been made to provide adequate resources to the Department's organizations involved in fighting violent crime.

CRIME PACKAGE

Q. Mr. Attorney General, have you reviewed S. 1455, a comprehensive package of crime initiatives that address things like a Cabinet level officer who would coordinate the various agencies involved in drug enforcement, improve arson investigations, permit greater use of preventive detention, revise sentencing procedures establishing flat time sentences and establish an assistance program for state and local agencies in which limited federal funding could be used for training and technical assistance?

A. The Department has carefully reviewed S. 1455 as well as other proposals intended to strengthen federal law enforcement efforts. While we are in accord with the basic thrust of S. 1455, we believe that law enforcement needs are much more effectively addressed by S. 2572, the Violent Crime and Drug Enforcement Improvements Act of 1982. This new omnibus crime bill would make dramatic improvements in bail, criminal forfeiture, sentencing and other federal criminal laws. The Administration, therefore, strongly supports S. 2572 and believes that this bill is preferable to other omnibus crime proposals presently pending before the Congress. Other aspects of S. 1455 have been addressed by administrative changes that did not require legislation. For example, with regard to the creation of a Cabinet level officer who would coordinate the actions of the various agencies involved in drug enforcement, there has been established a Cabinet Council on Legal Policy, headed by the Attorney General, that will devise a national strategy for drug enforcement to be implemented by all those agencies involved. The Associate Attorney General has been designated to head a working group that will ensure interdepartmental cooperation.

FBI/DEA REORGANIZATION

Q. Can you explain to this committee how the lines of authority and responsibilities will be drawn between Judge Webster and Mr. Mullens at DEA?

A. The Drug Enforcement Administration will continue intact as a law enforcement agency headed by an Administrator. He will continue to supervise and have decision making authority over DEA strategies and activities. The Administrator of DEA will report to the Department of Justice through the Director of the FBI. The Administrator of DEA, subject to the general supervision of the Director of the FBI, is responsible for developing strategies for joint DEA/FBI drug enforcement efforts and will seek to assure that the DEA is organized in the manner most condusive to effective law enforcement.

Q. Will DEA agents in some offices be reporting to FBI supervisors?

A. The supervisory structure within a DEA field office will remain intact. The reorganization will permit a more effective and efficient use of resources. Accordingly, under certain circumstances the specific areas of responsibility and the precise coordination between the two agencies will vary with the locale, the nature of the local drug problem and the availability of resources.

Q. Do you expect that in some instances for example, like in Delaware, that DEA will close down its office and leave all drug enforcement responsibilities to FBI agents?

A. The DEA remains the federal government's chief drug law enenforcement agency. The reorganization is designed so that FBI resources may be used to supplement and complement the efforts of DEA, not to supplant it. The division of drug enforcement efforts of the two agencies will vary with the availability of resources and the extent of the drug/crime problem in a particular field unit. In some locales the presence of a sufficiently large FBI counterpart could permit DEA to redeploy personnel to higher priority areas.

Q. It is rumored that one of the reasons against abolishing DEA was concern that the FBI agents would have a difficult time gaining the same level of state and local law enforcement cooperation as DEA has developed. How do you plan to resolve this problem, particularly if the only (sic) working drug cases in some jurisdictions will be FBI agents?

A. For the past 50 years, FBI's record of cooperation with state and local police departments has been outstanding. The FBI National Academy's record and the provision of laboratory and other investigative and training support augment these cooperative relationships in all areas of law enforcement. As the DEA/FBI reorganization proceeds, we are sure that the relationship in this area between FBI and state and local agencies will be enhanced.

DEA will continue to be responsible for the coordination of the drug enforcement effort with state and local enforcement agencies. The nature of drug enforcement requires almost daily contact with state and local law enforcement. The close cooperation that DEA has had with these agencies in the past will continue and will be assisted by the FBI.

Q. Mr. Attorney General you have indicated that combining DEA and FBI efforts, without abolishing or merging two agencies will augment the resources available to fight drug trafficking. Does this mean that the FBI plans to cut back attention in other areas, like organized crime, white collar crime, etc., in order to devote agent time to drugs?

A. The FBI's primary criminal investigative priorities are still foreign counterintelligence, violent crime, organized crime, white collar crime and public corruption. The FBI's drug effort will require reallocation of investigative funds from lesser priority areas with the intent being to continue to make quality the standard of where these available resources are applied.

ATTACHMENT A

TOTAL FEDERAL BUDGET EXPENDITURES TO IMPLEMENT S. 2222
FY 1983-86
($ in Millions)

	FY 83	FY 84	FY 85	FY 86
1. Justice Department				
- Legalization 1/	75.9	23.8	46.2	15.8
- Employer Sanctions	25.4	20.6	20.6	20.6
2. State Department				
- Legal Immigration	5.3	1.4	3.0	3.6
3. HHS				
- Legalization (including food stamps - DOA)	642.0	1,283.0	1,877.0	2,473.0
4. Labor Department				
- H-2; Labor Certification; Employer Sanctions	33.3	32.7	36.9	41.8
Total 2/	781.9	1,361.5	1,983.7	2,554.8

1/ Most legalization costs will be offset by fees.

2/ Not including cost of improving worker identification. Select Commission estimates for improved ID system ranged from $120-150 million annually. HHS estimates the cost of reissuing the social security card at a minimum of $1 billion, GAO estimates a cost of $2 billion if the card were to be reissued with features such as photographs or magnetic tape.

ATTACHMENT B

SURPLUS PROPERTY CLEARINGHOUSE REPORT

3/30/82

SITE	STATUS	RENOVATION COSTS
Chillicothe, Ohio (former federal reformatory)	Leased by state in 1966 for $37,472.50 per month.	Ohio has been performing necessary renovations and maintenance since 1966 when it took over the institution in Chillicothe. The State cannot reconstruct its costs.
McNeil, Island, Washington (former U.S. Penitentiary)	Leased by state July 1981 for $36,667.00 per month.	The Washington legislature appropriated $2.7 million for a variety of repairs viewed as only the beginning of those necessary to bring the institution up to state standards.
Charleston, Maine (former Air Force Station)	Donated to state Sept. 1981, no fee. Used by state since Oct. 80.	Maine has spent $50,000 thus far and plans yet unidentified further spending on this minimum custody, dormitory institution.
Watertown, New York (former Air Force Station)	Leased by the state September 1981, for a fee of $1 per month.	New York appropriated $5 million for fencing, new visiting bldg., new program bldg., infirmary renovation and conversion of detention unit.
Fort Dix, New Jersey (former Army prison)	Not yet occupied. New Jersey has signed the lease agreement, but Army officials must still sign.	New Jersey plans to spend around $4 million for new heating/ventilation, towers, fencing, plumbing and electrical systems.
Lockport Air Force Station, New York	Lease agreement finalized 2/82, however, an injunction prevents N.Y. from using the site.	New York plans to spend $5.5 million on housing units, fencing, new equipment and furnishings in converting it to a medium security facility.
Public Safety Center Minden, Nevada	Bureau of Land Management conveyed the property at no cost to Douglas County on 2/5/82 after previous county use.	County is building a Public Safety Center including a court, Sheriff/DA/Clerk offices, and 44 bed detention facility replacing older, smaller facility - construction costs are estimated at $5 million.

Senator SPECTER. Let me ask you this with respect to law enforcement training, Mr. Smith. Will the national academy sessions traditionally conducted by the FBI at its Quantico facility be continued in fiscal year 1983? The fiscal year 1983 request for this activity is less than $12.5 million. Last September, when $15.5 million was being requested, the Department told the Appropriations Committee that at $15.5 million, three sessions would have to be canceled. Are you in a position to respond to something that specific?

Attorney General SMITH. No. I could not. We certainly do intend to continue that program, but exactly what that change in amount would do, I would have to find out and let you know. We will be glad to do that.

Senator SPECTER. All right.

Would you identify yourself please?

Mr. ROONEY. I am Mr. Kevin D. Rooney, Assistant Attorney General for Administration.

The fixed operating cost for that program has been moved from one program in the FBI to the other. But the total funding level will remain.

[The following was received for the record.]

PROPOSED REPROGRAMING IN 1982 OF QUANTICO FIXED OPERATING COSTS

As illustrated on page eight of the Federal Bureau of Investigation justification material (Crosswalk of 1982 Changes), 119 positions, 116 workyears and $6,746,000 are proposed for reprograming from the General Law Enforcement Training program (State and local training) to the (Federal) Training program. The staff and funding involved in this proposed reprograming represent that portion of the fixed costs of operating the FBI Academy at Quantico, Virginia, which had been charged to the state and local training program. We believe it will be easier and more reasonable to budget for the fixed operating costs at Quantico in one training program, i.e., the (Federal) Training program, rather than pro rating the fixed costs of operating the Quantico facility between the two training programs. This proposed reprograming does not reflect a reduction in the level of FBI training resources directed toward satisfying the needs of state and local law enforcement personnel.

Senator SPECTER. Will there be a cancellation of any sessions this year?

Mr. ROONEY. Not to my knowledge.

[The following was received for the record:]

NATIONAL ACADEMY COURSES IN 1983

As stated on page 46 of the FBI's justification material, one of the major objectives of the General Law Enforcement Training program in 1983 will be "To provide executive development training to 1,200 law enforcement officials." Of these 1,200 about 1,000 will attend the National Academy, i.e., four classes of about 250 each.

Senator SPECTER. The final question is this. Will the hazardous devices course at Redstone Arsenal be held under your fiscal year 1983 request? This is, I am told, the only course of its type offered to State and local law enforcement personnel who deal with explosives.

This is what you call, Mr. Attorney General, a high degree of power and specialization, to get the Attorney General to respond to these questions in open hearings.

Attorney General SMITH. Well, it obviously has an interesting genesis.

Senator SPECTER. I do not know the legislative history of this, but I have been asked——

Attorney General SMITH. We will be glad to answer the question.

[The following was received for the record:]

HAZARDOUS DEVICES COURSE

The FBI's 1983 request includes about $575,000 for continuation of the hazardous devices training course at the Redstone Arsenal. Fiscal year 1983 will be the third year the FBI has provided and funded the course; formerly, the course had been funded by the Law Enforcement Assistance Administration. The FBI received a $525,000 program increase in 1982 for the hazardous devices training course and this amount, adjusted for inflation, is included in the 1983 request.

Senator SPECTER. In deference to about 65 other questions which I have not asked you which have been propounded for asking, I did defer to those specific questions.

We very much appreciate your coming here, Mr. Attorney General. We are sorry that more of our colleagues could not be here. It is an incredibly busy place, not necessarily any busier than the Department of Justice. We appreciate your presence. Senator Baucus has a further inquiry.

Senator BAUCUS. Thank you, Mr. Chairman. I just wanted to follow up slightly on the points I was trying to make and strongly urge the Department to maintain a vigilant protection of the Constitution.

I am a little concerned that the Department did not get upset when the Congress attached riders to the DOJ authorization bill limiting the Department's efforts in the school prayer issues and busing and so forth. I suspect that, if those riders had limited the Department of Justice intervening in the right to bear arms cases or rights of the unborn cases, perhaps the Department had another view.

I am just suggesting that the respect for the Department and for the country and for legal process, I think, will be strengthened the more the Department takes a neutral view on these constitutional questions rather than letting the department be influenced by social policy and advocates of social policy——

Attorney General SMITH. Let me say, Senator, that our concern for the Constitution and our system of government is every bit as strong as yours and every bit as strong as anybody else's. All of these are matters addressing how we express that concern. The mere fact that we may not adopt the same procedures that others adopt does not mean that our intensity is any less. As a matter of fact, being less vocal on the subject sometimes is more effective than being more vocal on it. I am not saying that totally applies in this case but the mere fact that we down there may not follow the course that you would follow or that we take positions different from yours does not in any sense mean that we have any less respect for the legal processes than you do.

There has always been a tendency to create the impression that, if you are not following the same procedures we think you should follow, therefore you are somehow being derelict or your concerns for the processes are not as strong as mine are. I have to say that falls into the realm of just plain political rhetoric. In this case, any

indication that we are not taking a position that we should take because our concerns are less, I have to say, is just plain nonsense.

Senator BAUCUS. I am glad to hear that. I am sure that is the case. I hope that facts and events bear that out. Thank you very much.

Senator SPECTER. Thank you, Mr. Attorney General.

Mr. Baxter, we will begin. As I have just said to you privately, I had not expected to stay because I have other commitments. The chairman could not be here now. When I arrived, I took over the proceeding for the Attorney General. I know that you have other commitments. I will stay a short time beyond. Senator Metzenbaum is on his way and has some questions. Perhaps we can begin and see how far we can get, or someone else may come to take over the presiding role.

We welcome you here, Mr. Baxter. You have been here on occasions in the past; you certainly will be in the future. Would you care to make any opening comments?

Mr. BAXTER. No. I have no opening statement, Senator. I understood that I was requested to come up and answer questions about antitrust for the Attorney General.

Senator SPECTER. What is the status of the litigation involving Bell Telephone at the present time?

Mr. BAXTER. At the present time, we are in the comment period, paralleling the course prescribed by the Tunney Act. Comments are coming in. We will have to summarize those and publish our summaries together with our comments on the submissions in the Federal Register. Of course, Judge Greene will take all that into account. The next formal step in the litigation will be Judge Greene's action on the motion to modify the consent decree.

Senator SPECTER. Procedurally, where does Judge Greene's action stand? He has vacated the order of Judge Birenno?

Mr. BAXTER. That is correct.

Senator SPECTER. Does Judge Greene take the position that the Tunney Act applies to the proceeding which is before him?

Mr. BAXTER. I do not believe he has taken a formal position on that. Of course, it has not been necessary because from the outset we contemplated paralleling the provisions of the Tunney Act, which we have been doing.

Senator SPECTER. With respect to an open issue from the last hearing, as I recall it, there was to be a formal plan submitted by AT&T to the Justice Department. An issue which you and I discussed when you were here last was whether that should be submitted to the Justice Department and whether that should be submitted to the court. And you expressed the opinion, as I recall, that it was sufficient to submit it to the Justice Department.

Has Judge Greene become involved in that issue, whether it is a matter for the court's determination or only the Justice Department's determination as to the adequacy of the AT&T plan?

Mr. BAXTER. Not to my knowledge. I have not actually been attending the hearings. I am not aware that he has taken any position on that. The proposed modification, of course, calls for it to be submitted to the Justice Department. There is no ambiguity about what the proposed modification calls for.

I suppose the judge could conceivably take the position that that was totally unsatisfactory and for that reason he would not approve the proposed modification.

Senator SPECTER. With respect to the time requirements under the Tunney Act, they are governed by a time limitation. As I recall, it is 60 days?

Mr. BAXTER. I believe that is correct.

Senator SPECTER. We explored this question before, but let us explore it again. There may have been some further light on the subject.

What will happen with that time limitation when the AT&T modification is not submitted to the Justice Department until after that 60-day limitation would have expired?

Mr. BAXTER. I suppose that depends whether the judge thinks he needs some additional time. It is not clear to me that that date could not be extended.

Senator SPECTER. Is it clear to you that it could be extended?

Mr. BAXTER. It is not a question I have really looked into.

Senator SPECTER. So, do you know whether Judge Greene will have access to the AT&T plan before he rules on the dismissal?

Mr. BAXTER. I do not know when the AT&T plan will be submitted. I know that they are working on it. The proposed modification does not call for the submission of that plan until 6 months after the proposed modification is entered. So, it is——

Senator SPECTER. Until 6 months after there is court approval of the modification?

Mr. BAXTER. That is correct.

Senator SPECTER. Well then under those terms Judge Greene cannot consider it.

Mr. BAXTER. If things went in accordance with the maximum allowable schedule, then it would be impossible for the judge to take the plan into account at the time he acted on the proposed modification.

Senator SPECTER. What you are saying is that the arrangement worked out between AT&T and the Justice Department is that AT&T has 6 months to submit its plan after the court proceedings are concluded.

Mr. BAXTER. Well, I would not say concluded. There is a provision for continuing jurisdiction and supervision, as there almost always is.

Senator SPECTER. What is the date which starts the 6-month period for AT&T to submit the plan?

Mr. BAXTER. The date on which the judge approves the proposed modification.

Senator SPECTER. Well then at least by that date he would not have the AT&T plan?

Mr. BAXTER. Not if they do not in fact submit it until 6 months after he acts. One cannot disagree with that. They are in the process of preparing that plan. It is not inconceivable the plan might in fact be ready and available before the judge acts on the modification. There is nothing that says they cannot submit it sooner. The proposed modification says they cannot submit it later than that.

Senator SPECTER. As a practical matter, is not it really necessary for the judge to have access to that plan if he is to make an intelligent decision on approving the conclusion of the litigation?

Mr. BAXTER. I do not believe so, no. The proposed modification is very clear in its requirements. It is perfectly true that it leaves a fair amount of detail to be implemented. It seems to me that Judge Greene can look at that proposed modification and have a very clear notion what the general contours of the plan will necessarily be because they must comply with the terms of the proposed modification.

Senator SPECTER. Well, that raises the question as to what is detail and what is policy. I suppose that will be up to Judge Greene to decide.

Mr. BAXTER. Surely.

Senator SPECTER. If Judge Greene takes the position that he wants to extend the time and have access to the entire AT&T plan, will the Department of Justice object to that procedure?

Mr. BAXTER. I do not offhand see any reason to object to that procedure, but that is not a question to which we have formally addressed ourselves.

Senator SPECTER. Mr. Baxter, does the Department have any plans to close the Philadelphia antitrust field office or any other antitrust field office in fiscal years 1982 or 1983?

Mr. BAXTER. We have no such plans at the present time. That possibility has been considered as a cost control measure, but the appropriations measures that have been proposed are sufficient so that that would not be necessary.

Senator SPECTER. The Attorney General testified earlier this morning about a 5-percent reduction in the Antitrust Division.

You look quizzical.

Mr. BAXTER. I am not sure exactly about that number. There is a modest reduction in the budget in the amount of about $1.25 million. It depends what base one starts with, of course. I can produce numbers for you all the way from 25 percent to about 3 percent, depending on——

Senator SPECTER. It is 5 percent of personnel.

Mr. BAXTER. There is a 40-position reduction of lawyer, which is roughly 5 percent of aggregate personnel, about 10 percent of lawyers.

Senator SPECTER. How can you carry out your job with that kind of a reduction, Mr. Baxter, just efficiency and capability?

Mr. BAXTER. Yes, I do not think we need as many lawyers as we have. I think the personnel ratios need to be adjusted. We have too few secretaries in proportion to lawyers. We have too few paralegals in proportion to lawyers. As a consequence, lawyers are doing work for which lawyers are not really required. It is not cost effective. So, my long-term management plan, if I might use so presumptuous a term, is to permit the number of the lawyers to shrink by attrition to some level at which everybody really appears to be busy and working to capacity this should hold the number of secretaries and paralegals, and perhaps expand that number until the ratios seem to me more nearly right and lawyers are only doing lawyers' work.

Senator SPECTER. Mr. Baxter, on the IBM case, which was the subject of the last hearing, in the intervening time the trial judge has raised the question, called for an inquiry as to your having received a consulting fee in private practice. I believe you have responded publicly in the media. Would you please state for the record your view of the trial judge's contention on that issue?

Senator METZENBAUM. Would you also at the same time, Mr. Chairman, ask the witness to respond as to when he had an acknowledgment of the letter signed by Senator Mathias and me concerning companies and organizations for which Mr. Baxter had performed consulting services. Senator Mathias and I had asked for a full list and when we might expect a full response to our letter of March 4.

Senator SPECTER. You have two questions pending, Mr. Baxter. I am sure you can keep them straight.

Mr. BAXTER. I understand Senator Metzenbaum's question. I am not really sure that I understand yours, Senator. I wonder if you would put it to me again.

Senator SPECTER. Were you retained by IBM in any capacity prior to becoming Assistant Attorney General of the Antitrust Division?

Mr. BAXTER. I have never been retained by IBM at any point in time.

In the spring of 1975, about 7 years ago, I was called by a friend who is a partner in a Los Angeles law firm, the firm of O'Melveny & Meyers, at my Stanford Law School office. I flew down to Los Angeles at his request and spent half a day in his office. My records do not show whether it was morning or afternoon, but they do show that it was half a day. We discussed their need for academic expert witnesses in some impending private litigation against the IBM case. I went back to my office, and the only activity in which I engaged was to read some very, very technical academic publications by a young mathematical economist who, I gather, since they read the scholarship of most other economists, they felt uncomfortable with because of the level of mathematics in which those two articles were written.

I analyzed those two articles. One of them was so complex mathematically that I had to go to a friend at the university to help me through it. I wrote an analysis of those two articles, I recall. I do not have that analysis. I do not know whether it still exists. I sent that back to the O'Melveny firm.

All that is in accordance with what I have said previously. That was the nature of the relationship. I was retained by the law firm to help them select economic expert witnesses in the then pending private litigation.

Senator SPECTER. That litigation involved IBM?

Mr. BAXTER. That litigation did involve IBM. It was one of the so-called peripheral, west coast peripheral cases against IBM. But I had no contact with the litigation. I saw no officer or employee of the IBM Co. I never saw an IBM document.

The episode really was similar in some ways to my relationship with AT&T, about which I was asked at my confirmation hearing and gave a very similar response, that I had gone to New York—the differences were two. In the case of AT&T, my contacts were

actually with the management of the AT&T Co. and it was rather more recent than my encounter pertaining to the IBM case. But both episodes were quite similar in the sense that there was no involvement in the litigation. There was no involvement with company documents. I was performing essentially an academic exercise.

Senator SPECTER. What was your compensation on the incident relating to IBM?

Mr. BAXTER. My records show that I spent over 2 calendar quarters in the aggregate about 14.5 or 14.75 hours. I was billing $100 an hour at that time; so, I would have billed the company $1,450 or $1,475. In addition to that, I made one trip to and from Los Angeles. I would have billed for those expenses. So, I expect my aggregate billings of time and expenses were slightly in excess of $1,500.

Senator SPECTER. As you testify, you do not put a precise figure. Do you have a record as to what you were paid?

Mr. BAXTER. I have only timelogs which show the number of hours I put in.

Senator SPECTER. No tax return or tax records which would show——

Mr. BAXTER. I do not have tax records going back that far with me. If I went back to my income tax returns in a corrugated box somewhere in the basement of the Stanford Law School, they might or might not show the separate payment item.

Senator SPECTER. How long do you keep those corrugated boxes, Mr. Baxter?

Mr. BAXTER. I have my tax returns going back for a very long time. I cannot tell you exactly when but well back into the 1950's, so that I know that I would have them. The real question——

Senator SPECTER. You did not pay taxes in the 1940's, did you?

Mr. BAXTER. I do not believe that I paid taxes in the 1940's.

The real question is, there came a point in time when I shifted from reporting individual consulting fees as miscellaneous income to treating my consulting activities as a business and filing on a schedule C. Of course, on a schedule C, you aggregate all the income items, and there is a single gross income line. So, it is possible that that number is buried in an aggregation with other consulting fees, but I do not know.

Senator SPECTER. What was the AT&T fee?

Senator METZENBAUM. Before you finish that, Mr. Chairman. I wonder have you not been back to Stanford or to the west coast since this entire matter developed?

Mr. BAXTER. No, I have not.

Senator METZENBAUM. Do you expect to go back soon?

Mr. BAXTER. I have no plans to go back.

Senator METZENBAUM. Could somebody else not dig out your tax return for that period on your behalf?

Mr. BAXTER. I do not know who I would ask or how they would find them. They have some boxes that I packed down there myself. I suppose I could ask a friend to go down and rummage through there and see if I could find the returns for that year.

Senator METZENBAUM. Have you asked IBM—IBM did not give you the check directly?

Mr. BAXTER. No.

Senator METZENBAUM. Have you asked the firm that made the check out to you what the amount was? It seems to me that you are testifying that it would be your estimate that it was $1,450 or $1,475. If it should develop that it was a figure substantially higher than that, I am certain that you would want to disclose that fact.

Mr. BAXTER. Yes. As I was saying to the chairman, all my own records show is what I have indicated to you. I asked the law firm if they could find my billing letters for that period. They did send me copies of two billing letters. They show exactly what I would have expected them to show. The one for the first quarter shows a billing of—again, I do not have the exact amounts—some fraction, 6, 7, 8 hours of the 14, plus the travel expenses to Los Angeles.

The second one shows the remaining time fraction. In the aggregate, they come to just over $1,500.

Senator METZENBAUM. There is no indication as to whether there is the third billing from——

Mr. BAXTER. O'Melveny & Meyers.

Senator METZENBAUM. O'Melveny & Meyers?

Mr. BAXTER. Well, yes, that is what I am starting to say. In addition, they told me that they made a disbursement in the following quarter of $75. But I have no entry in my books that corresponds to that $75, and neither they nor I can explain exactly what that $75 was. It may have been another expense item, but I cannot trace it in my books.

Senator METZENBAUM. Do you want to answer my question?

Mr. BAXTER. Yes. I have not really quite finished with the question I am answering.

Senator METZENBAUM. I thought you had finished. I did not mean to interrupt you, sir.

Mr. BAXTER. If I could continue for just 1 more minute.

In going through my books carefully in an attempt to answer your question, I find still another entry several years later in the spring of 1978 about which even now I have absolutely no recollection. But my records show that a different partner of O'Melveny & Meyers came to my law school office and spent a half hour with me there, again talking about expert witnesses. The entry in my book says, quote, "in re expert testimony," close quote. I assume again it was with reference to one of the west coast peripheral litigations. My records also show that I spent 4 hours, 3 days after that visit from him, again reading academic literature by a well-known economist. I must confess I do not recall that at all, but that entry is there.

I never made any billing at all for that subsequent episode. That was why I assume I found it only when I went back to my timesheets, which I have kept for a large number of years, recording my time quarter-hour by quarter-hour, a practice that I fell into when I was in practice.

Senator METZENBAUM. Did you secure for IBM or the law firm some of those expert witnesses?

Mr. BAXTER. Not to the best of my knowledge. As I say, I was not involved in the litigation in any way. I do not know who they used as experts. But I did give them an evaluation of two articles, a very favorable evaluation, by the way, of two, what I thought were brilliant although very complex and abstruse articles, that had been

published by a young economist in the Journal of Economic Theory. Whether they ever engaged him or used his services in any way, I have no information.

Senator METZENBAUM. The word you are saying is "columnist," is that right? C-o-l-u-m-n? Is the word "young columnist?"

Mr. BAXTER. No. Economist.

Senator METZENBAUM. Economist. All right.

Now would you care to answer my question about the joint letter from Senator Mathias and me?

Mr. BAXTER. Yes. I have necessarily done the research that was necessary to answer that letter by myself. It has taken me a while to do that. But I have pulled together such historical records as I have available to me. I have now been through them all. I have now compiled a list of entities that from several—by combining several different sources, that I am prepared to send up to you. The only thing I have not done is written the covering letter for it.

It is a peculiar list. I will describe it to you in more detail when I send it along, because of the nature of the journals I have. I have a telephone log which I always kept at my law school office and in which I recorded every long distance phone call I ever made, with an indication of who it should be billed to. At the end of each month I would get a computer printout from the university of all my long distance calls. This log enabled me to say this one is appropriately charged to the university; this one is a personal expense of my own; and this one should be charged to CitiCorp or IBM or AT&T or whomever it may be.

That is the record that goes back the furthest. I believe that record goes all the way back to 1970. In addition to that, I have a binder in which I have always kept my expense vouchers for any travel or business expenses I incurred on behalf of a client. That record, I believe, goes back to 1972. I have my timesheets going back to March of 1977. So, what I have been able to do is to compile a list of every entity which appears in any of those journals. So, it is a list essentially of every enterprise on whose behalf I have ever made and charged a phone call, every entity on whose behalf I have ever incurred or billed for travel expenses, and then since 1977 a complete list of every entity for whom I have ever devoted any billable time. I have compiled a list from those several sources which runs on for some pages, which I will be sending up to you; it should be here by the end of the week, I should think, Senator.

Senator METZENBAUM. Mr. Chairman, may I proceed with my questions?

The CHAIRMAN. You may proceed.

By the way, Senator Biden, who could not be here, requested that his statement follow my statement in the record. Without objection, that will be done. Senator Biden has a few questions here to be propounded to the Attorney General. We will ask that these be transmitted to him for that purpose.[1]

[Material referred to follows:]

---

[1] Responses can be found on page 32.

QUESTIONS FOR MR. SMITH FROM SENATOR BIDEN

1. Last fall you will recall we discussed the Violent Crime Task Force report. Have you made a decision on the most important recommendation calling for the establishment of a 2 billion dollar program to assist state correctional needs?

2. You mentioned the program to turn over surplus federal property for states to use for prison space. How many of these transfers have occurred and what have been the cost to states to renovate these properties?

3. Another recommendation of the Task Force was to set-up a small and focused assistance program for state and local enforcement. What is the status of that recommendation?

BUDGET CUTS

1. Last year I questioned you about cutting cost effective programs like the Tax Division and Criminal Division which tend to be revenue producing. This year in your statement you make similar reference to the benefits of these programs but don't request additional positions. In fact, the 1983 request is 123 positions below the level of 1981 a 9 percent reduction. Could you please explain the rationale for this?

Mr. Attorney General, we now have fewer DEA agents, fewer FBI agents, less assistance to state and local enforcement, and crime continues to climb. Isn't it time to admit that a real commitment to the crime problem will cost more money?

You have stated that this budget will maintain current levels. Those levels as we have agreed on in the past are a reduction from 1981 levels. With crime being the problem that it is how can you say that this budget is adequate to fight crime at the federal, state and local level?

CRIME PACKAGE

Mr. Attorney General, have you reviewed S. 1455, a comprehensive package of crime initiatives that address things like a Cabinet level officer who would coordinate the various agencies involved in drug enforcement, improve arson investigations, permit greater use of preventive detention, revise sentencing procedures establishing flat time sentences and establish an assistance program for state and local agencies in which limited federal funding could be used for training and technical assistance?

FBI/DEA REORGANIZATION

1. Can you explain to this committee how the lines of authority and responsibilities will be drawn between Judge Webster and Mr. Mullens at DEA?

2. Will DEA agents in some offices be reporting FBI supervisors?

3. Do you expect that in some instances for example, like in Delaware, that DEA will close down its office and leave all drug enforcement responsibilities to FBI agents?

4. It is rumored that one of the reasons against abolishing DEA was concern that the FBI agents would have a difficult time gaining the same level of state and local law enforcement cooperation as DEA has developed. How do you plan to resolve this problem, particularly if the only agency working drug cases in some jurisdictions will be FBI agents?

5. Mr. Attorney General you have indicated that combining DEA and FBI efforts, without abolishing or merging the two agencies will augment the resources available to fight drug trafficking. Does this mean that the FBI plans to cut back attention in other areas, like organized crime, white collar crime, etc., in order to devote agent time to drugs?

The CHAIRMAN. You may proceed.

Senator METZENBAUM. Mr. Chairman, normally, I would put my statement into the record. But it is not very long and I think I am going to read it because I believe it important that the witness know what my concerns are before I interrogate him, although I am not sure that it is any secret to him.

During the past year, we have witnessed an incredible assault on the backbone of the free enterprise system, namely the antitrust laws. The assault, as you well know, has not come from conspiracy-oriented firms nor from academic critics but, rather, from the indi-

viduals entrusted with the authority and solemn duty to oversee the Government's enforcement of those laws.

Throughout the long history of antitrust law in the United States, I do not believe that there is any record of there ever having been such an attempt to ignore the clear intent of Congress and the law as interpreted by our Supreme Court on the part of a Government antitrust official as we are currently observing. We have heard longstanding Supreme Court decisions referred to as "outrageous" and "idiocy," certainly pretty strong language to be used in connection with a Supreme Court decision. We have seen Government attorneys directed to withdraw from their official usage phrases long accepted as the Supreme Court's interpretation of antitrust law.

The law of vertical price fixing, which prohibits price fixing between manufacturers and their wholesalers or retailers, has been systematically ignored by the current administration.

It seems that you, Mr. Baxter, and your associates believe that it is your right to disregard entire areas of antitrust law because the law is different from your own personal economic theories. You have expressed your distaste not only for the Supreme Court's decisions on vertical price fixing but for the Court's and Congress prohibitions against vertical mergers, tie-in arrangements, price discrimination, and price stabilization conspiracies.

Frankly, I am aware of the fact that we have a new administration in office. I respect the right of new administrations to change policies in accordance with their view of the public good. I also understand the need in these times of limited resources for agencies to exercise discretion in choosing how to allocate their scarce funds. But I am frank to say to you that I do not believe that discretion is a mandate to ignore existing law. As a matter of fact, on a previous occasion—I think you are aware of the fact—I indicated to you that I felt that an administration that had come in on a campaign of law and order has a greater responsibility, if it is not to lose its credibility as well as its integrity with the American people, to abide by those laws and to see that they are effectively enforced whether or not there is actual agreement with the law's original intent or its language.

I do not believe that changing policy means executive rewrite of laws which have served the public well through many shifts in the political wind. I do not believe that scarce resources are an excuse to systematically rip apart the economic fiber which holds the free enterprise system together. Yet, this is precisely what your public statements and those of other Antitrust Division officials indicate is the path the Division is taking and expects to continue to take over the next few years.

The Justice Department, as you well know, has primary responsibility for antitrust enforcement in this country. I believe it is imperative that its representatives provide assurances to Congress and to the Nation that they will fulfill the responsibilities which have been entrusted to them and, yes, that they will obey the law and enforce the law as it is.

If public officials cannot give those assurances, I respectfully submit—and there is nothing personal about this—that those per-

sons should not be allowed to hold their positions, positions that have serious importance to our economic health.

I hope that in a few questions today and some that I will submit after the hearing today, that we will be given a basis for hoping that our Government officials will take their solemn duties seriously, that they will effectively enforce the law as it is, that the antitrust laws will be enforced in accordance with the will of Congress and the interpretation of the Supreme Court.

On February 22, 1982, you sent a memo out to all Antitrust Division attorneys. In that memo you said the following:

> Today I encountered the most recent of a very large number of documents generated within the division over the past year which asserted that private parties had violated section one by means of an agreement which stabilized prices. I suspect that this usage is derivative from the outrageous generalization of Justice Douglas in the *Socony Vacuum* case to the effect that parties commute a per se violation of section 1 to the extent that they raised, lowered, or stabilized prices.

Continuing on in your memo:

> To suggest that all private agreements which have the effect of stabilizing prices constitute antitrust violations is idiocy——

The CHAIRMAN. I have got to leave for a leadership meeting in about 5 minutes. If some Republican comes in, he will, of course be the chairman, if no one comes in, Senator Metzenbaum has agreed to take over. He will wind it up by 12 o'clock. So, without objection, that will be done, Senator.

Senator METZENBAUM. I thank the chairman.

> To suggest that all private agreements which have the effect of stabilizing prices constitute antitrust violations is idiocy of an even higher order than the suggestion that agreements lowering prices constitute such violations. Over the months ahead as you have occasion to employ the many items of boilerplate that reside in our files, I ask you to strike the word "stabilize" whenever it is used in this context. I also ask that you perform the perhaps more difficult task of excising it from your official usage.

You are also quoted in the Wall Street Journal as calling Supreme Court decisions "whacko" and "rubbish."

Mr. Baxter, regardless of your view, do you think it is appropriate for a responsible public official to use such language with reference to a Supreme Court justice?

Mr. BAXTER. I do not recall using any such language with reference to a Supreme Court justice. I have used it frequently and I think accurately with respect to a large number of opinions of the courts over the years. I completely reject the characterization contained in your opening statement about the manner of our antitrust enforcement. In my view, we are enforcing the laws in a very consistent and coherent way. The laws talk about certain conduct being illegal where the effect may be to lessen competition. There have been court decisions over the years that have suggested arrangements can be legal whether or not they have the effect of lessening competition. We read the statutes——

Senator METZENBAUM. You give me a speech. I just want an answer to the question about the propriety. My question is, Do you think it appropriate for a responsible public official to use such language with reference to a Supreme Court justice?

Now, you do talk about it as derivative from the outrageous generalization of Justice Douglas in the *Socony Vacuum* case. You go

on to talk about the fact that to suggest that all private agreements which have the effect of stabilizing prices constitute antitrust violations is idiocy. It did not suggest it; he held that way. I am questioning you about the propriety of a former law professor and now the head of the Antitrust Division, a responsible public official, talking about justices of the Supreme Court with that kind of language.

Mr. BAXTER. I am talking about the generalization, and the generalization is indeed outrageous. It makes absolutely no economic sense at all. And I would prefer that the attorneys in the division use language that made sense instead of simply mechanically repeating phrases from early opinions that everyone recognizes have no economic validity or coherence.

Senator METZENBAUM. Well, whether they have economic validity is hardly the issue, as I understand the law. It seems to me that the law is that which it is. You are not head of the department of economics; you are head of the Division of Antitrust of the Department of Justice.

Has the Supreme Court overruled that *Socony Vacuum* case?

Mr. BAXTER. There are a large number of recognitions by the Supreme Court that agreements which reduce prices, for example, are not always anticompetitive. There are a large——

Senator METZENBAUM. Mr. Baxter, your answers are always speeches. I just asked you a simple question. Have they overruled the *Socony Vacuum?*

Mr. BAXTER. They have not overruled the *Northern Securities* case. They have not overruled the case in the eighteen——

Senator METZENBAUM. Did they overrule the *Socony Vacuum* Case? Yes or no. That is all the question demands.

Mr. BAXTER. The question is not susceptible to a yes or no answer——

The CHAIRMAN. He has a right to explain his answer——

Senator METZENBAUM. I understand it but——

The CHAIRMAN. Let him answer and then he can explain it.

Senator METZENBAUM. Answer yes or no.

The CHAIRMAN. I request that you answer the question and then explain it. You have a right to do that.

Mr. BAXTER. There is no case that says the *Socony Vacuum* decision is hereby overruled. There is no case that says a very large number of prior cases which have been totally abandoned by the court have ever been overruled. The Supreme Court goes way out of its way to attempt to avoid overruling earlier opinions. The Simpson versus Union Oil case squarely overruled one of the two branches of the 1926 General Electric holding. Nevertheless, it steadfastly insisted that it did not do precisely what it did.

To ask whether a case has been overruled in this area is to ask a question which in most contexts is not very helpful. Whether the Court would likely apply that language to cases today is an entirely different question.

Senator METZENBAUM. Your budget proposal lists your priorities for the expenditure of division funds with antitrust litigation for consumer protection absolutely last, after administrative services. This area of litigation has involved, according to your own statement, enforcement of policies protecting the public against the dan-

gers of adulterated food, cancer-causing agents, unsafe products, unfair debt collection practices, and other fraud and abuses.

Why have you seen fit to list the consumer protection aspect of antitrust as the last item as far as priority in the budget?

Mr. BAXTER. The reference to which you are alluding has nothing to do with antitrust enforcement at all. In addition to its antitrust responsibilities, the Antitrust Division acts in a role which many other divisions within the Department of Justice act in to a much greater extent than we. We have within the Antitrust Division a consumer protection section. The consumer protection section does not do antitrust work. It brings suits on behalf of the Food and Drug Administration. It brings suits on behalf of a number of other client entities around the city. It is not part of our antitrust mission. It has no reference to the very important consumer protection features of antitrust law, which are all subsumed in the activities of other sections. It is a client representational function which we perform to a minor degree. That is why it is separately listed in the budget in that fashion.

Senator METZENBAUM. You have recently adopted a procedure that is somewhat surprising to me. You have stated that you will "protect the interest of the United States" in the development of antitrust law through participation as amicus curiae in private antitrust appeals. But now you have taken some new action that I do not know that the Antitrust Division has ever done before. You may be able to enlighten me on that fact. But, as I understand it, you have now indicated that you are going to intervene on the side of defendants in civil cases to persuade courts in private cases to deprive plaintiffs of the benefit of existing antitrust law.

Now I may be wrong on my understanding. But, if I am right in my understanding, then is this not a departure? If it is a departure, is it appropriate to use Antitrust Division funds for such purposes?

Mr. BAXTER. First as to the accuracy of your perception, I think basically it is accurate although I would not have used the word intervention, which has a particular technical and legal meaning.

Senator METZENBAUM. I understand that.

Mr. BAXTER. But we do intend to participate in private cases with a view to attempting to persuade the courts to abandon precisely some of the earlier cases which we do not think the court today, if squarely faced with those issues, would follow. In short, I regard it as a very responsible attempt to bring the state of the case law into a closer correspondence with other more recent Supreme Court decisions where there are these relics never officially overruled, drifting around in the case law.

To some extent that participation——

Senator METZENBAUM. Is this not a departure for the Division of Antitrust, the first time for them ever to be participating in civil cases on the side of the defendant?

Mr. BAXTER. I have not researched that point, but I am not aware of any prior activity of this kind.

Senator METZENBAUM. The Supreme Court has long held that price fixing between manufacturers and their distributors is per se illegal under the antitrust laws. The Court has made quite clear that vertical price fixing is to be distinguished from other vertical

arrangements such as territorial or customer restrictions, in the *GTE Sylvania* case.

When did the Supreme Court change the rule on vertical price fixing, as you are now stating it to be?

Mr. BAXTER. I'm sorry, Senator?

Senator METZENBAUM. As you are now stating it to be.

Mr. BAXTER. I have never stated that the Supreme Court has held vertical price maintenance to be lawful. The Supreme Court episodically over a long period of time has said that resale price maintenance is illegal. It has never given any coherent reasons for those holdings. Indeed, it has only on two occasions in history given any reasons at all, and those two explanations are entirely inconsistent with one another.

The reasoning process in which it engaged in several of its more recent and better decisions are completely inconsistent with the proposition that resale price maintenance should be illegal per se, not inconsistent with the proposition that there are contexts in which it should be held illegal, and I certainly think there are contexts in which it should be held illegal. But there are a wide variety of contexts in which resale price maintenance has absolutely no anticompetitive risks and performs precisely the same functions about which the court reasoned so well in the case that you referred to. So, it is not at all clear what the Supreme Court would say if a resale price maintenance case came to it today in a context where it posed no anticompetitive dangers.

Part of the reason for our participation in some of these civil cases is an attempt to give the Supreme Court an opportunity to address itself to questions such as that one.

Senator METZENBAUM. But this is the very point that I made in my opening statement. That is, that people who work for the U.S. Government, have an obligation to enforce the laws as they are. In this instance, as I understand what you are saying, you do not accept the reasoning of the Supreme Court. You do not agree with the manner in which they came to their conclusion. Therefore, you have taken it upon yourself to totally disregard that and want to bring it back to the Supreme Court again.

My question is, A, under what authority do you have to expend Government resources for the purpose of challenging the law as it is? B, are you not under a sworn duty to enforce the law as it is and not to try to change the law except through the congressional method? Certainly your responsibility under your oath is to enforce the present law, and you are saying you do not agree with that law. It is as if I went down the street and said: I don't believe in the parking law; I think it's absolutely silly that I can't park in front of this store. But I am doing that as a private citizen; I could not get by with it. You are doing it as a public official and taking the position that you do not agree with that decision; therefore, you are going to raise the issue over again to try to get it into the Supreme Court. As a matter of fact, you are even spending taxpayers' money to intervene in cases or to participate in cases for the purpose of raising those issues.

I just question whether any public official has the right to do that, to question the law as it is except by bringing the issue to Congress.

Mr. BAXTER. Well, I completely disagree with you, Senator. In the first place, your questions presuppose that you know or indeed I know in any definitive way what the law is as it is, whatever that means. Justice Holmes well defined law on one occasion as a prediction as to what a court will say. And it is not a matter of disregarding the law as it is. It is a matter of my predicting that, if these issues were brought to the Supreme Court again, well briefed in appropriate cases, they would say something quite different; and that will turn out to be the law as it is.

Senator METZENBAUM. Could I not do that on my parking violation, hopeful that they would not find that that was a violation any more, even though that is the law? Could we not all do that?

Mr. BAXTER. There is a great difference between being hopeful and having legitimate expectation that they will no longer enforce the parking laws.

As for the participation point, of course, there is nothing unusual at all about the Justice Department participating in a wide variety of litigations on both sides through amicus curiae proceedings. So far, that is what we are doing, but——

Senator METZENBAUM. There is a variation, as you have just indicated. You know of no previous cases where the Division of Antitrust has intervened on the part of a defendant.

Mr. BAXTER. No, I did not mean to say where they had not filed amicus briefs. I am talking about participation at the district court level, which is one of the possibilities I do contemplate, and insofar as there might be participation at the district court level in other than amicus fashion, I would not be able to point to any precedents for that, which does not make me think any the less of the idea.

Senator METZENBAUM. Are there cases in which the Antitrust Division has filed amicus briefs on the side of defendants in the past?

Mr. BAXTER. I would be confident that there were, although I have no list of examples at hand.

Senator METZENBAUM. Would you be good enough to have your Department research that question for this committee so that we may be apprised of it? It is my understanding that the Department has not done that in the past. I think that this is an expenditure of Federal funds in an entirely new area. In this oversight hearing I think it is entirely appropriate that we know—at this time of such effort to constrain the budget—if suddenly your effort to change the antitrust laws in this manner or antitrust enforcement is a new expenditure of funds. If so, maybe some of us who feel that antitrust laws ought to be enforced as they are, ought to provide by amendment that you not be permitted to do so. But I would like to know if this is a new departure for the Department.

Mr. BAXTER. I would be happy to do that, Senator. I agree it is appropriate although I do find it a very peculiar notion that in enforcing the law as it is the Justice Department is perfectly free to urge endless expansion and further incursion into commercial activity by an ever more intrusive set of antitrust laws but it can never urge that in any particular respect the intrusion has already been too great.

Senator METZENBAUM. Particularly if what they are doing violates the law as it presently is. That is the question, I think: whether or not you are using Federal taxpayers' dollars to try to change

the law as it is rather than coming to the Congress and asking the Congress to change it.

Mr. BAXTER. There would never be any occasion to write briefs on either side of the case if it were possible simply in some mechanistic way to determine what the law is as it is.

Senator METZENBAUM. I am not sure that many would agree with that point, but we will let it ride.

One of your projects that you seem to be undertaking at the present time is that you have indicated that you plan to spend substantial sums to free antitrust violators from orders protecting the public from repeat conduct by those firms. In fact, one report quotes you as saying, "Out of the first 76 decrees that were screened, we tentatively identified 40 as likely candidates for termination or modification and four as deserving special enforcement attention."

Thus it appears that you will undo 10 times as many decrees as you will enforce. Why should the public be called upon to pay for your systematic destruction of an antitrust compliance program that took years to put together?

Mr. BAXTER. You do not seem to understand what the job of the Antitrust Division is, Senator.

Senator METZENBAUM. Maybe I understand it better than you do, sir.

Mr. BAXTER. That is possible.

In my view, the Antitrust Division's job is enforcing the antitrust laws in ways that are intended to improve the efficiency of the way in which the economy operates, to increase its innovativeness, to get the largest possible quantity of goods and services out of the available resources. And one does that in the context of a very dynamic and changing economy. Some of these decrees to which you refer were entered half a century ago in the context of a completely different technology, pertained to an industry that no longer vaguely resembles what it looked like at the time the decrees were entered. With changes in technology and industrial and commercial practices, decrees that made sense at one point in time can now be having totally anticompetitive effects.

In recognition of this, over the last 8 or 10 years, the Antitrust Division has abandoned its practice of seeking perpetual decrees in civil antitrust cases. At the present time and indeed for the last 5 or 6 years—no credit to me—the Antitrust Division never seeks injunctive provisions which run more than 10 years in their duration out of the expectation that a decree more likely than not will be technologically obsolescent at the end of a 10-year period. Nevertheless, there are these literally hundreds, something over 1,200, decrees that were entered during a period of time when the division did routinely seek perpetual decrees. A large number of them are having anticompetitive consequences. We intend to eliminate them as we can identify them.

Senator METZENBAUM. Are you aware that there is a real concern in America that your actions are going to be very effective in really impeding free movement in the free enterprise system, that they will bear down most heavily on the small business community, that they will adversely affect the consumers of America, and that, as a consequence, antitrust, which so proudly was the product

of both Republican and Democratic authors as well as Members in this Congress over a period of so many years and was so effectively enforced by both Republican and Democratic administrations, is in one fell swoop being turned backward because of your concept as to what best serves the economy of this Nation and not what is in accordance with the present law?

Mr. BAXTER. That is a very long perception to be abroad in the land. No, I was not aware that that perception was abroad, but I think it is totally misguided.

Senator METZENBAUM. Totally what?

Mr. BAXTER. Misguided. Erroneous, mistaken.

Senator METZENBAUM. I would be happy to have you join me at some small business meetings or to go out and talk with some consumers or to meet with some consumer groups to see whether or not their concerns are not real concerns. They have always looked to the Antitrust Division as an ally and as a friend, as a supporter of free competitive forces working in the free enterprise system, making it possible for small business people to continue to operate or to start up anew in order to, hopefully, let competitive forces keep prices in line.

Your talk about antitrust laws being adjusted to aid some economic objective that you have in mind, I think, violates everything that has heretofore been said by the Members of Congress on both sides of the aisle, in committee reports with respect to antitrust legislation, and, as a matter of fact, in the platforms of both the Democratic and the Republican Parties.

Mr. BAXTER. I do not agree with that at all, Senator.

Senator METZENBAUM. Have not you actually said publicly that vertical mergers are almost always harmless? When did Congress or the Supreme Court decide that the law prohibiting anticompetitive vertical mergers no longer applies?

Mr. BAXTER. Congress said that a merger was illegal where the effect may be substantially lessened competition, and vertical mergers, by and large, do not answer that description; sometimes they do.

Senator METZENBAUM. In the House report in 1949 on the Celler-Kefauver Act it was said that:

> One reason for this action was to make it clear that this bill is not intended to prohibit all acquisitions among competitors. But there is a second reason, which is to make it clear that the bill applies to all types of mergers and acquisitions, vertical and conglomerate as well as horizontal, which have the specified effects of substantially lessening competition.

Yet you say to us that vertical mergers are almost always harmless.

Mr. BAXTER. Vertical mergers never meet the specified—I should not say never; I do not mean that. Vertical mergers very rarely meet the specified conditions to which reference was made in the sentence that you just read to me. Where vertical mergers may substantially lessen competition, they are, of course, covered by section 7, and the same thing is true of conglomerate mergers.

Senator METZENBAUM. Mr. Baxter, I am going to conclude this hearing because I had assured Senator Thurmond that I would do that.

I want to again reemphasize to you my very strong feeling that, regardless of your personal opinion, you have an obligation to enforce the law, not an obligation to change the law except through Congress. I want to repeat. An administration that came into office on the basis of law and order, that talks about criminality in this country, also has an obligation to enforce the law as it is, regardless of the personal views of the person in charge of enforcing that law. To do less than that is, in my opinion, irresponsible at a minimum and possibly illegal, although I am not certain that it is the latter.

I cannot emphasize to you enough my disappointment that this administration has seen fit to put into a position of such responsibility someone such as you—and I respect your right to have your personal views—but the fact that you are there to do such violence to the law of the land as it presently is, is, in my opinion, a great disappointment.

This meeting stands adjourned.

[Whereupon, at 12:01 p.m., the meeting was adjourned.]

[The following response was subsequently supplied for the record:]

U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

MAY 19 1982

Honorable Strom Thurmond
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is to provide follow-up responses to questions posed by Senator Specter during the Attorney General's testimony before the Senate Judiciary Committee on March 23, 1982.

Senator Specter inquired as to whether there exists any provision of law that compels public disclosure of a file on an individual obtained by that individual under the Freedom of Information Act, 5 U.S.C. §552. We have determined that Senator Specter's question can be answered in the negative. If an individual requests and receives his own file under either the Freedom of Information Act or the Privacy Act of 1974, 5 U.S.C., §552a, such disclosure has no necessary effect on subsequent requests by other parties seeking the same file. Assuming proper processing of such a request, subsequent requesters would receive no more or no less than they would have had the information not been disclosed to the subject of the file.

During the Attorney General's testimony before your Committee, Senator Specter also asked a question about the City of Philadelphia's difficulties in obtaining the use of a Naval home for a juvenile detention facility. As you know, we have established a clearinghouse in the Bureau of Prisons to facilitate the transfer of surplus federal properties to State and local jurisdictions for correctional facilities or sites. The Administration and this Department have given high priority to this program. Those properties that have been transferred are definite indicators of the Administration's willingness to be of assistance to State and local governments in their efforts to reduce violent crime.

When Senator Specter apprised the Department of the situation in Philadelphia, clearinghouse staff contacted the regional General Services Administration (GSA) office concerned. GSA staff there indicated they were interested in selling to the highest bidder, apparently following their regulations. In this case, they reported the City could offer no more than $700,000, so the property was being sold to a private corporation for $1.2 million.

Clearinghouse staff were never informed of the details of the negotiations between the City of Philadelphia and GSA until they inquired and learned the City had been virtually eliminated as a low bidder. The Administration's program was apparently not a factor.

In such instances, State and local governments can seriously doubt the resolve of the Administration, GSA and the Department of Justice in assisting State and local governments in meeting a critical, nationwide correctional housing problem.

To avoid such situations in the future, we are working with GSA to establish a process whereby GSA headquarters and/or regional offices promptly notify Norman A. Carlson, Director of the U.S. Bureau of Prisons, whenever any State or local government inquires about any excess or surplus property for use as a correctional facility or site. At that time the clearinghouse staff can inject the Administration's emphasis upon surplus property transfers for correctional purposes.

We appreciate Senator Specter calling this matter to our attention. It should enable us to improve the effectiveness of the Administration's program to assist State and local corrections.

Please let us know if we can provide any further information or assistance with regard to these matters.

Sincerely,

(Signed) Robert A. McConnell

Robert A. McConnell
Assistant Attorney General

cc: Honorable Arlen Specter
United States Senate

○